

k7e2MaxC kjc

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

20 Cr. 330 (AJN)

5 GHISLAINE MAXWELL,

6 Defendant.

7 -----x

Teleconference

8 Arraignment

9 Bail Hearing

10 July 14, 2020

3:05 p.m.

11 Before:

12 HON. ALISON J. NATHAN,

13 District Judge

14 APPEARANCES

15 AUDREY STRAUSS

16 United States Attorney for the

17 Southern District of New York

18 BY: ALISON J. MOE

MAURENE R. COMEY

ALEXANDER ROSSMILLER

19 Assistant United States Attorneys

20 COHEN & GRESSER, LLP

21 Attorneys for Defendant

22 BY: MARK S. COHEN

CHRISTIAN R. EVERDELL

23 HADDON MORGAN & FOREMAN, P.C.

24 Attorneys for Defendant

25 BY: JEFFREY S. PAGLIUCA

LAURA A. MENNINGER

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

k7e2MaxC kjc

1 THE COURT: Good afternoon, everyone. This is
2 Judge Nathan presiding.

3 This is United States v. Ghislaine Maxwell, 20 Cr.
4 330.

5 I will take appearances from counsel, beginning with
6 counsel for the defendant.

7 MS. MOE: Good afternoon, your Honor. Mark Cohen,
8 Cohen & Gresser, for Ms. Maxwell. Also appearing with me today
9 is my partner Chris Everdell of Cohen & Gresser and Jeff
10 Pagliuca and Laura Menninger of the Haddon Morgan firm. Good
11 afternoon, your Honor.

12 THE COURT: Good afternoon, Mr. Cohen.

13 And for the government.

14 MS. MOE: Good afternoon, your Honor. Alison Moe for
15 the government. I'm joined by my colleagues Maurene Comey and
16 Alex Rossmiller. And also, with the court's permission, we
17 learned that the executive staff for the U.S. Attorney's office
18 were unfortunately not able to Connecticut at the overflow
19 dial-in so, with the court's permission, we would like to dial
20 them in from a phone here if that's acceptable to the court.

21 THE COURT: The last word, the overflow dial-in was
22 not full. Just a moment and we will make sure that they can
23 connect in.

24 And let me say good afternoon, Ms. Maxwell, as well.

25 THE DEFENDANT: Good afternoon, Judge.

k7e2MaxC kjc

1 THE COURT: Ms. Maxwell, are you able to hear me and
2 see me okay?

3 THE DEFENDANT: Yes, thank you.

4 THE COURT: And are you able to hear Mr. Cohen and
5 counsel for the United States as well?

6 THE DEFENDANT: Yes. Thank you.

7 THE COURT: All right. If at any point you have
8 difficulty with any of the technology, you can let someone
9 there know right away, let me know, and we will pause the
10 proceedings before going any further. Okay?

11 THE DEFENDANT: Thank you, Judge.

12 THE COURT: All right.

13 Just a minute while we check on the call-in line.

14 MS. MOE: Thank you, your Honor.

15 (Pause)

16 MS. MOE: Your Honor, apologies. We have also heard
17 from colleagues in the office that the line is full. We have,
18 however, been able to dial in the executive staff to a phone
19 number here and my understanding is that they can hear and
20 participate that way, if that's acceptable to the court. But
21 of course we defer to the court's preference.

22 THE COURT: We are concerned about feedback from being
23 on a speakerphone in that room. The phone number for
24 nonspeaking co-counsel that was provided, that line is not
25 full, and I would assume the executive leadership of the office

k7e2MaxC kjc

1 falls within that category, so they may call in to that number.

2 MS. MOE: Yes, your Honor. Thank you. We will do
3 that.

4 THE COURT: All right.

5 MS. MOE: Thank you, your Honor.

6 THE COURT: All right. Thank you. Then we will go
7 ahead and proceed.

8 I have called the case. I have taken appearances.
9 Counsel, let me please have oral confirmation that the court
10 reporter is on the line.

11 THE COURT REPORTER: Good afternoon, your Honor.
12 Kristen Carannante.

13 THE COURT: Good afternoon, and thank you so much.
14 We also have on the audio line Pretrial Services
15 Officer Leah Harmon and --

16 THE PRETRIAL SERVICES OFFICER: Hello, your Honor.
17 Good afternoon.

18 THE COURT: Good afternoon. Thank you.
19 We are here today for the arraignment, the initial
20 scheduling conference, and bail hearing in this matter.

21 As everyone knows, we are in the middle of the
22 COVID-19 pandemic. I am conducting this proceeding remotely,
23 pursuant to the authority provided by Section 15002 of the
24 CARES Act and the standing orders issued by our Chief Judge
25 pursuant to that act.

k7e2MaxC kjc

1 I am proceeding by videoconference, which I am
2 accessing remotely. Defense counsel and counsel for the
3 government are appearing remotely via videoconference and the
4 defendant, Ms. Maxwell, is accessing this videoconference from
5 the MDC in Brooklyn.

6 Ms. Maxwell, I did confirm that you could hear me and
7 see me; and, again, if at any point you have any difficulty
8 with the technology, please let me know right away. Okay?

9 THE DEFENDANT: Thank you, your Honor. I will do
10 that.

11 THE COURT: Thank you. And if at any point you would
12 like to speak privately with Mr. Cohen, let me know that right
13 away, and we will move you and your counsel into a private
14 breakout room where nobody else will be able to see or hear
15 your conversation, okay?

16 THE DEFENDANT: Again, thank you, your Honor. I
17 appreciate that. Thank you.

18 THE COURT: Thank you.

19 Mr. Cohen, likewise, should you request to speak with
20 Ms. Maxwell privately, don't hesitate to say that.

21 MR. COHEN: Thank you, your Honor.

22 THE COURT: We will turn now to the waiver of physical
23 presence. I did receive a signed waiver of physical presence
24 form dated July 10, 2020.

25 Mr. Cohen, could you please describe the process by

k7e2MaxC kjc

1 which you discussed with Ms. Maxwell her right to be present
2 and the indication of her knowing and voluntary waiver of that
3 right provided on this form.

4 MR. COHEN: Yes, your Honor. We, given the press of
5 time, we were not able to physically get the form to our
6 client, but my partner Chris Everdell and I went through it
7 with her, read it to her, and she gave us authorization to sign
8 on her behalf and that's reflected on the form in the boxes
9 where indicated, your Honor.

10 THE COURT: Okay. Ms. Maxwell, is that an accurate
11 account of what occurred?

12 THE DEFENDANT: That is completely accurate, your
13 Honor. Yes.

14 THE COURT: And you have had the form read to you or
15 you have it physically now at this point?

16 THE DEFENDANT: That is correct, your Honor.

17 THE COURT: Okay. And you have had time to discuss it
18 with your attorney?

19 THE DEFENDANT: I have, your Honor. Thank you.

20 THE COURT: Okay. And do you continue to wish to
21 waive your right to be physically present and instead to
22 proceed today by this videoconference proceeding?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All right. I do find a knowing and
25 voluntary waiver of the right to be physically present for this

k7e2MaxC kjc

1 arraignment, scheduling conference, and bail hearing.

2 Counsel, as you know, to proceed remotely today, in
3 addition to the finding I have just made, I must also find that
4 today's proceeding cannot be further delayed without serious
5 harms to the interests of justice.

6 Ms. Moe, does the government wish to be heard on that?

7
8 MS. MOE: Yes, your Honor.

9 The government submits that proceeding remotely in
10 this fashion would protect the interests of the parties and the
11 safety in view of the pandemic. We further submit that this
12 proceeding can be conducted remotely with full participation of
13 the parties in view of the preparation and steps everyone has
14 taken to ensure proper participation.

15 THE COURT: All right. Thank you.

16 Mr. Cohen?

17 MR. COHEN: Your Honor, we have agreed to proceed
18 remotely as your Honor just laid out.

19 THE COURT: Okay. I do find that today's proceeding
20 cannot be further delayed without serious harms to the
21 interests of justice for, among other reasons, that the
22 defendant, who is currently detained, seeks release on bail.

23 The final preliminary matter I will address is public
24 access to the proceeding, which has garnered significant public
25 interest. As I have indicated in prior orders, the court has

k7e2MaxC kjc

1 arranged for a live video feed of this proceeding to be set up
2 in the jury assembly room at the courthouse. This is the
3 largest room available and, with appropriate social distancing,
4 it can safely accommodate 60 people. The court has further
5 provided a live video feed to the press room at the courthouse
6 where additional members of the credentialed in-house press
7 corps can watch and hear the proceeding.

8 Additionally, the court has provided a live audio feed
9 for members of the public. My prior order indicated that the
10 line can accommodate 500 callers, but with thanks of the court
11 staff, that capacity has been increased to 1,000 callers.

12 Lastly, the court has provided through counsel a
13 separate call-in line to ensure audio access to nonspeaking
14 co-counsel, any alleged victims identified by the government,
15 including those who wish to be heard on the question of
16 pretrial detention, and any family members of the defendant.
17 That line is operational now as well.

18 Counsel, beginning with Mr. Cohen, any objection to
19 these arrangements regarding public access?

20 MR. COHEN: No, your Honor.

21 THE COURT: Ms. Moe?

22 MS. MOE: No, your Honor.

23 THE COURT: Then I will make the following findings:

24 First, COVID-19 constitutes a substantial, if not
25 overriding, reason that supports the court's approach to access

k7e2MaxC kjc

1 in this case. As the chief judge of the district has
2 recognized in order number 20MC176, COVID-19 remains a national
3 emergency that restricts normal operations of the courts.
4 Conducting this proceeding in person is not safely feasible.

5 Second, the measures taken by the court are no broader
6 than necessary to address the challenges posed by the pandemic.
7 Although the number of seats in the jury assembly room is
8 limited to 60, it is necessary to do so for public and
9 courthouse staff safety and is closely equivalent to the number
10 of people who would be able to watch an in-court proceeding in
11 a regular-sized courtroom. The number of people who will be
12 able to hear the live audio of this proceeding far exceeds
13 access under normal in-person circumstances.

14 Lastly, given the safety and technology limitations,
15 there are no reasonable alternatives to the measures the court
16 has taken.

17 Accordingly, the access provided is fully in accord
18 with the First and Sixth Amendment public trial rights.

19 With those preliminary matters out of the way,
20 counsel, I propose we turn to the arraignment.

21 Ms. Moe, am I correct that this is an arraignment on
22 the S1 superseding indictment?

23 MS. MOE: That's correct, your Honor.

24 THE COURT: Can you explain what the difference is
25 between the S1 and the original indictment?

k7e2MaxC kjc

1 MS. MOE: Yes, your Honor.

2 The difference is a small ministerial correction, a
3 reference to a civil docket number contained in the perjury
4 counts, which are Counts Five and Six of the superseding
5 indictment. Aside from the alteration of those docket numbers,
6 the reference to them, there are no other changes to the
7 indictment.

8 THE COURT: All right. Again, I will conduct the
9 arraignment on the S1 indictment.

10 Ms. Maxwell, have you seen a copy of the S1 indictment
11 in this matter?

12 THE DEFENDANT: I saw the original indictment, your
13 Honor. The original --

14 THE COURT: Okay.

15 All right. Mr. Cohen, did you have an opportunity to
16 discuss with Ms. Maxwell the ministerial change that was
17 completed by way of the superseding indictment?

18 MR. COHEN: Yes, yes, Judge. We have, your Honor.

19 THE COURT: Any objection to proceeding on the
20 arraignment of the S1 indictment, Mr. Cohen?

21 MR. COHEN: No, your Honor.

22 THE COURT: All right.

23 Ms. Maxwell, have you had an opportunity to discuss
24 the indictment in this case with your attorney?

25 THE DEFENDANT: I have, your Honor.

k7e2MaxC kjc

1 THE COURT: All right.

2 (Indiscernible crosstalk)

3 THE COURT: Go ahead.

4 THE DEFENDANT: No. I said I have been able to
5 discuss it, your Honor, with my attorney.

6 THE COURT: Thank you.

7 You are entitled to have the indictment read to you
8 here in this open court proceeding or you can waive the public
9 reading. Do you waive the public reading?

10 THE DEFENDANT: I do, your Honor. I do waive --

11 THE COURT: How do you wish to --

12 THE DEFENDANT: -- your Honor.

13 THE COURT: Thank you. And how do you wish to plead
14 to the charge?

15 THE DEFENDANT: Not guilty, your Honor.

16 THE COURT: All right. I will enter a plea of not
17 guilty to the indictment in this matter.

18 Counsel, we will turn now to the scheduling
19 conference.

20 I would like to begin with a status update from the
21 government. Ms. Moe, you should include in your update a
22 description of the status of discovery. Please describe the
23 categories of evidence that will be produced in discovery. I
24 will also ask you to indicate how you will ensure that the
25 government will fully and timely meet all of its constitutional

k7e2MaxC kjc

1 and federal law disclosure obligations.

2 Go ahead, Ms. Moe.

3 MS. MOE: Thank you, your Honor.

4 With respect to the items that the government
5 anticipates will be included in discovery in this case, we
6 expect that those materials will include, among other items,
7 search warrant returns, copies of search warrants, subpoena
8 returns, including business records, photographs,
9 electronically stored information from searches conducted on
10 electronic devices. In addition, the materials with respect to
11 the core of the case also include prior investigative files
12 from another investigation in the Southern District of Florida
13 among other items.

14 With respect to the status of discovery, the
15 government has begun preparing an initial production and are
16 prepared to produce a first batch of discovery as soon as a
17 protective order is entered by the court.

18 With respect to the status of the proposed protective
19 order, the government sent defense counsel a proposed
20 protective order last week. We have touched base about the
21 status of that with defense counsel, and they conveyed that
22 they would like to continue reviewing and discussing it with
23 the government, which we plan to do shortly after this
24 conference, with an eye towards submitting a proposed
25 protective order to the court as soon as possible. Following

k7e2MaxC kjc

1 the entry of that protective order, as I noted, your Honor, the
2 government is prepared to make a substantial production of
3 discovery.

4 Your Honor, in advance of the conference, the
5 government and defense counsel proposed a joint schedule for
6 discovery, motion practice, and a proposed trial date, in
7 particular, the date selected in that schedule with an eye
8 towards assuring that there was sufficient time for the
9 government to do a careful and exhaustive and thorough review
10 of all of the materials that I just referenced to make sure
11 that the government is complying with its discovery obligations
12 in this case, which we take very seriously. We expect that the
13 bulk of the relevant materials will be produced in short order,
14 primarily by the end of this summer, with additional materials
15 to follow primarily in a category I mentioned before, your
16 Honor, of electronically stored information, which is subject
17 to an ongoing privilege review which we discussed and
18 communicated with defense counsel about. We have proposed a
19 scheduling order again to be very thorough in our review of
20 discovery and in files in various places where they may be
21 located and we are taking an expansive and thoughtful approach
22 to our obligations in this case, your Honor.

23 THE COURT: Let me just follow up specifically, since
24 you have referenced prior investigative files, to the extent we
25 have seen in other matters issues with complete disclosure of

k7e2MaxC kjc

1 materials, it has been in some instances due to precisely that
2 factor. So has there been a plan developed to ensure that down
3 the road we are not hearing that there were delays or problems
4 with discovery as a result of the fact that part of the
5 disclosure obligation here includes materials from other
6 investigative files?

7 MS. MOE: Yes, your Honor.

8 The files in particular that I am referring to are the
9 files in the possession of the F.B.I. in Florida in connection
10 with the previous investigation of Jeffrey Epstein. The
11 physical files themselves were shipped to New York and are at
12 the New York F.B.I. office. They have been imaged and scanned
13 and photographed to make sure that a comprehensive review can
14 be conducted, and they are physically in New York so that we
15 can have access to those files. And again, as we have heard in
16 ongoing information, we are particularly thoughtful about those
17 concerns given the history of this case and the volume of
18 materials and the potential sensitivities, your Honor.

19 THE COURT: Beyond the paper files which you have just
20 indicated, the physical files, have you charted a path for
21 determining whether there is any other additional information
22 that must be disclosed?

23 MS. MOE: Your Honor, just to clarify, is your
24 question with respect to the previous investigation or -- I
25 apologize, your Honor. I wasn't sure what you meant.

k7e2MaxC kjc

1 THE COURT: Among other things, but, yes, I'm drilling
2 down specifically on that since that has been, in somewhat
3 comparable circumstances in other matters, the source of issues
4 related to timely disclosures.

5 MS. MOE: Yes, your Honor. Our team met personally
6 with the F.B.I. in Florida to make sure that we had the
7 materials, and it was represented to us that the materials that
8 the F.B.I. provided in Florida were the comprehensive set of
9 materials. We will certainly have ongoing conversations to
10 make sure that that is the case and if, in our review of files,
11 we discover other materials, we will handle that with great
12 care, and we are particularly sensitive to that concern.

13 THE COURT: And I expect here, and in all matters, not
14 just accepting of initial representations made regarding full
15 disclosure, but thoughtful and critical pushing and pressing of
16 questions and issues with respect to actively retrieving any
17 appropriate files. Are we on the same page, Ms. Moe?

18 MS. MOE: Yes, your Honor. Very much so.

19 THE COURT: All right. Thank you.

20 With that, why don't you go ahead and lay out the
21 proposed schedule that you have discussed with Mr. Cohen, and
22 then I will hear from Mr. Cohen if he has any concerns with
23 that proposal.

24 MS. MOE: Yes, your Honor.

25 We would propose the completion of discovery, to

k7e2MaxC kjc

1 include electronic materials, to be due by Monday, November 9
2 of this year, and following that we would propose the following
3 motion schedule: that defense motions be due by Monday,
4 December 21 of this year; that the government's response be due
5 on Friday, January 22, 2021; and that replies be due on Friday,
6 February 5, 2021.

7 THE COURT: All right. Mr. Cohen, based on the
8 government's description of both the quantity and quality of
9 discovery, is that schedule that's been laid out sufficient
10 from your perspective to do everything that you need to do?

11 MR. COHEN: Your Honor, just two points in that
12 regard. I think counsel for the government did not mention in
13 the e-mail we had sent to your Honor's law clerk that August 21
14 would be the deadline for production of search warrant
15 applications and the subpoena returns. I think she just failed
16 to mention it for the record. That would also be part of the
17 schedule.

18 THE COURT: Thank you.

19 Ms. Moe, do you agree?

20 MS. MOE: That's correct, your Honor. I apologize.
21 We did include that in the e-mail to your Honor's chambers, and
22 that is correct.

23 And thank you, counsel, for clarifying that.

24 MR. COHEN: Two additional points, your Honor. The
25 trial schedule that we are agreeing to, of course subject to

k7e2MaxC kjc

1 the court's approval, assumes there will be no substantive
2 superseding indictment. If there is one, which the government
3 has advised us they don't believe is imminent or I assume not
4 at all, we might have to come back to the court to address not
5 just trial schedule but other schedule as well.

6 And I am assuming -- we take your Honor's points about
7 the issues on discovery, and we agree with them, particularly
8 as to electronic discovery; and I am assuming that, as this
9 unfolds, if we spot an issue we think needs further attention,
10 we will be able to bring it to the court's attention.

11 Those are my points.

12 THE COURT: Thank you, Mr. Cohen.

13 Let me go ahead and ask, Ms. Moe, Mr. Cohen has made a
14 representation but I will ask if you do anticipate at this time
15 filing any further superseding indictments adding either
16 defendants or additional charges?

17 MS. MOE: Your Honor, our investigation remains
18 ongoing, but at this point we do not currently anticipate
19 seeking a superseding indictment.

20 THE COURT: All right. So with that -- and also let
21 me ask, Ms. Moe, just because it is next on my list, what
22 processes the government has put in place to notify alleged
23 victims of events and court dates pursuant to the Crime Victims
24 Rights Act.

25 MS. MOE: Yes, your Honor. I am happy to give the

k7e2MaxC kjc

1 courts details about the process we used for notification for
2 this conference and also what we anticipate to use going
3 forward.

4 So to begin with, the government notified relevant
5 victims or their counsel immediately following the arrest of
6 the defendant on July 2 about the fact of the arrest and the
7 initial presentment scheduled for later that day.

8 In advance of the initial presentment, those victims
9 were provided the opportunity to participate through the
10 court's protocol for appearances in New Hampshire.

11 On July 7, the court set a date for arraignment and
12 bail hearing on July 14, today, and by the following day from
13 the court's order, the government had notified relevant victims
14 or their counsel of that scheduling order and advised victims
15 and counsel of their right to be heard in connection with the
16 bail hearing.

17 On that same day, the government posted to its victim
18 services website, including a link to the indictment, as well
19 as scheduling information relating to the hearing.

20 On July 9, the government updated the website to
21 include the dial-in information that the court provided.

22 In addition, on July 8, the government sent letter
23 notifications to individuals who have identified themselves as
24 victims of Ghislaine Maxwell or Jeffrey Epstein that were not
25 specifically referenced in the indictment.

k7e2MaxC kjc

1 Our process going forward, as we noted in that letter
2 to victims, is that we will use an opt-in process so we will
3 not notify individuals who do not wish to receive additional
4 notifications but will continue to provide ongoing information
5 about upcoming conferences and relevant details on the
6 government's victim services website.

7 With respect to this specific hearing, the government
8 has been advised by counsel to three victims of their interest
9 in being heard in connection with today's bail proceeding. One
10 victim's views are expressed in the government's reply
11 memorandum; one victim has submitted a statement to the
12 government and asked that the government read it during today's
13 proceedings; and one victim has asked to be heard directly, and
14 the government anticipates that she will make a statement at
15 any time during this proceeding as necessitated by the court.

16 THE COURT: All right. Thank you.

17 Then, with that, returning to the schedule that you
18 have laid out, and I thank counsel for conferring in advance,
19 as to a proposed schedule, Mr. Cohen, let me just finalize if
20 you agree to the proposed schedule that has been laid out by
21 Ms. Moe and supplemented by you?

22 MR. COHEN: Yes, your Honor.

23 THE COURT: All right. Thank you.

24 And, Ms. Moe, you continue to support the proposed
25 schedule?

k7e2MaxC kjc

1 MS. MOE: Yes, your Honor.

2 THE COURT: All right. Then I will set the schedule
3 as jointly proposed by counsel. To reiterate, I am setting --
4 let me ask, Ms. Moe, if we are going to proceed to trial, how
5 long of a trial does the government anticipate?

6 MS. MOE: Your Honor, the government anticipates that
7 its case in chief would take no more than two weeks. But in
8 terms of the length of time to block out a trial date, in an
9 abundance of caution, in view of the need for jury selection
10 and the defense case, we would propose blocking three weeks for
11 trial.

12 THE COURT: All right. Thank you.

13 With that, I will adopt the schedule. I hereby set
14 trial to commence on July 12, 2021, with the following pretrial
15 schedule:

16 Initial nonelectronic disclosure generally, to include
17 search warrant applications and subpoena returns, to be due by
18 Friday, August 21, 20.

19 Completion of discovery, to include electronic
20 materials, to be due by Monday November 9, 2020.

21 Any initial pretrial defense motions, based on the
22 indictment or disclosure material and the like to be due by
23 Monday, December 21, 2020.

24 If any motions are filed, the government's response
25 due by Friday, January 22, 2021.

k7e2MaxC kjc

Any replies due by Friday, February 5, 2021.

If any motions seek an evidentiary hearing, I will reach out, chambers will reach out to schedule an evidentiary hearing.

And, as indicated, trial to commence on July 12, 2021.

In advance of trial, following motion practice, the court will put out a schedule regarding pretrial submissions, including *in limine* motions and the like.

With that, counsel, other matters to discuss regarding scheduling?

Mr. Cohen?

MR. COHEN: Not at this time, your Honor, not from the defense at this time.

THE COURT: Thank you.

Ms. Moe?

MS. MOE: Nothing further from the government regarding scheduling, your Honor. Thank you.

THE COURT: Okay. And, Ms. Moe, does the government seek to exclude time under the Speedy Trial Act?

MS. MOE: Yes, your Honor. In view of the schedule and the interests of producing discovery and permitting time for the defense to review discovery, contemplate any motions and pursue those motions, the government would seek to exclude time from today's date until our trial date as court set forth today.

k7e2MaxC kjc

1 THE COURT: Mr. Cohen, any objection?

2 MR. COHEN: No, your Honor.

3 THE COURT: Okay. I will exclude time from today's
4 date until July 12, 2021, which I have said is a firm trial
5 date. I do find that the ends of justice served by excluding
6 this time outweigh the interests of the public and the
7 defendant in a speedy trial. The time is necessary for the
8 production of discovery and view of that by defense, time for
9 the defense to consider and prepare any available motions and,
10 in the absence of resolution of the case, time for the parties
11 to prepare for trial.

12 To Ms. Moe and Mr. Cohen, although I have not set an
13 interim status conference in the case, we do have our motion
14 schedule, but for both sides, if at any point you wish to be
15 before the court for any reason, simply put in a letter and we
16 will get something on the calendar as soon as we conceivably
17 can.

18 With that, Mr. Cohen, let me ask counsel if there is
19 any reason that we should not turn now to the argument for
20 bail?

21 MR. COHEN: No, your Honor.

22 THE COURT: Ms. Moe?

23 MS. MOE: No, your Honor. Thank you.

24 THE COURT: All right. I will hear on that question.
25 It is the government's motion for detention, so I propose

k7e2MaxC kjc

1 hearing from the government first, and then any alleged victims
2 who have indicated that they wish to be heard pursuant to 18
3 U.S.C. 3771(a)(4), and then I will hear from Mr. Cohen.

4 Any objection to proceeding thusly, Mr. Cohen?

5 MR. COHEN: No, your Honor.

6 THE COURT: Ms. Moe.

7 MS. MOE: Thank you, your Honor.

8 Your Honor, as we set forth in our moving papers, the
9 government strongly believes that this defendant poses an
10 extreme risk of flight. Pretrial Services has recommended
11 detention, the victims seek detention, and the government
12 respectfully submits that the defendant should be detained
13 pending trial.

14 Your Honor, there are serious red flags here. The
15 defendant has significant financial means. It appears that she
16 has been less than candid with Pretrial Services. She has not
17 come close to thoroughly disclosing her finances to the court.
18 She has strong international ties and appears to have the
19 ability to live beyond the reach of extradition. She has few,
20 if any, community ties, much less a stable residence that she
21 can propose to the court to be bailed to. And she has a strong
22 incentive to flee to avoid being held accountable for her
23 crimes.

24 Because the defendant is charged with serious offenses
25 involving the sexual abuse of minors, your Honor, there is a

k7e2MaxC kjc

1 legal presumption that there are no conditions that could
2 reasonably assure her return to court and, your Honor, the
3 defendant has not come anywhere close to rebutting that
4 presumption.

5 Turning first to the nature and seriousness of the
6 offense and the strength of the evidence, the indictment in
7 this case arises from the defendant's role in transporting
8 minors for unlawful sexual activity and enticing minors to
9 travel to engage in unlawful sexual active and participating in
10 a conspiracy to do the same. The indictment further charges
11 that the defendant perjured herself, that she lied under oath
12 to conceal her crimes.

13 Your Honor, the charged conduct in this case is
14 disturbing and the nature and circumstances of the offense are
15 very serious. The defendant is charged with participating in a
16 conspiracy to sexually exploit the vulnerable members of our
17 community. In order to protect the privacy of the victims, I'm
18 not going to go into details, your Honor, about the particular
19 victims beyond what's contained in the indictment and our
20 briefing; but, as the indictment alleges, the defendant enticed
21 and groomed girls who were as young as 14 years old for sexual
22 abuse by Jeffrey Epstein, a man who she knew was a predator
23 with a preference for underaged girls. The indictment alleges
24 that the defendant participated in some of these acts of abuse
25 herself, including sexualized massages in which the victims

k7e2MaxC kjc

1 were sometimes partially or fully nude. She also encouraged
2 these minors to engage in additional acts of abuse with Jeffrey
3 Epstein. The indictment makes plain, your Honor, this was not
4 a single incident or a single victim or anything isolated but,
5 instead, it was an ongoing scheme to abuse multiple victims for
6 a pattern of years. This is exceptionally serious conduct.

7 Given the strength of the government's evidence and
8 the serious charges in the indictment, there is an incredibly
9 strong incentive for the defendant to flee, an incentive for
10 her to become at that fugitive to avoid being held accountable
11 and to avoid a lengthy prison sentence.

12 The history and characteristics of the defendant
13 underscores the risk of flight that she poses. The Pretrial
14 Services report confirms that the defendant has been moving
15 from place to place for some time, your Honor; and most
16 recently it appears that she spent the last year making
17 concerted efforts to conceal her whereabouts whilst moving
18 around New England, most recently to New Hampshire, which I
19 will discuss momentarily with respect to that particular --

20 THE COURT: Ms. Moe?

21 MS. MOE: -- property.

22 THE COURT: Ms. Moe, there is one assertion in the
23 defense papers that I don't think I have seen the government's
24 response to, and that is the contention that Ms. Maxwell,
25 through counsel, kept in touch with the government since the

k7e2MaxC kjc

1 arrest of Mr. Epstein. Is that accurate and did that include
2 information as to her whereabouts?

3 MS. MOE: Your Honor, that information did not include
4 information about her whereabouts for starters; and, second,
5 your Honor, the defendant's communications through counsel with
6 the government began when the government served the defendant
7 with a grand jury subpoena following the arrest of Jeffrey
8 Epstein. So it is unsurprising that her counsel reached out to
9 the government, which is in the ordinary course when an
10 investigation becomes overt.

11 The government's communications with defense counsel
12 have been minimal during the pendency of this investigation.
13 Without getting into the substance, those contacts have not
14 been substantial, your Honor. And to the court's question,
15 they certainly have not included any information about
16 defendant's whereabouts.

17 THE COURT: All right. Go ahead.

18 MS. MOE: Thank you, your Honor.

19 It appears that the defendant has insufficient ties to
20 motivate her to remain in the United States. With respect to
21 her family circumstances, she does not have children, she does
22 not appear to reside with any immediate family members, and she
23 doesn't have any employment that would require her to remain in
24 the United States.

25 But, by contrast, she has extensive international

k7e2MaxC kjc

1 ties. While she is a naturalized citizen of the United States,
2 she is a citizen of France and the United Kingdom. She grew up
3 in the United Kingdom and has a history of extensive
4 international travel. She owns a property in the
5 United Kingdom. Your Honor, there is a real concern here that
6 the defendant could live beyond the reach of extradition
7 indefinitely.

8 The government has spoken with the Department of
9 Justice attachés in the United Kingdom and France.

10 With respect to France, we have been informed that
11 France will not extradite a French citizen to the United States
12 as a matter of law, even if the defendant is a dual citizen of
13 the United States.

14 As well, we have been informed that there is an
15 extradition treaty between the United Kingdom and the United
16 States. The extradition process would be lengthy, the outcome
17 would be uncertain, and it's very likely that the defendant
18 would not be detained during the pendency of such an
19 extradition proceeding.

20 Those circumstances raise real concerns here.
21 Particularly because the defendant appears to have the
22 financial means to live beyond the reach of extradition
23 indefinitely. As we detailed in our briefing, your Honor, the
24 defendant appears to have access to significant and
25 undetermined and undisclosed wealth.

k7e2MaxC kjc

1 In addition to the financial information described in
2 the government's memoranda, we note, your Honor, that in the
3 Pretrial Services report it appears that the defendant tried
4 initially to brush off the subject of her finances when the
5 Pretrial Services officer asked her, noting that she didn't
6 have those details. The defendant ultimately provided limited,
7 unverified, and questionable information that now appears in
8 the Pretrial Services report. She listed bank accounts
9 totaling less than a million dollars and a monthly income of
10 nothing. Zero dollars per month of income.

11 In addition to the matter of her finances, the report
12 raises other concerns about whether the defendant has been
13 fully transparent with the court or whether she is being
14 evasive.

15 THE COURT: Ms. Moe, you have emphasized the
16 indication on the financial report of zero dollars of the
17 income. Does the government think that there is income? Is
18 there some uncertainty as to whether that is investment income
19 as opposed to employment income or the like? What is the
20 reason for the emphasis on that or to the extent it is an
21 indication that the government finds that implausible?

22 MS. MOE: Yes, your Honor.

23 Separate from the matter of employment, it is very
24 unclear whether the defendant is receiving proceeds from trust
25 accounts or an inheritance or means of other kinds. It is

k7e2MaxC kjc

1 simply implausible that the defendant simply has a lump set of
2 assets and no other stream of income, especially given the
3 lifestyle that she has been living and as detailed in the
4 Pretrial Services report. It just doesn't make sense. Either
5 there are other assets or there is other income. We can't make
6 sense of this lifestyle and this set of financial disclosures.
7 This just doesn't make sense. And as I will detail in a
8 moment, your Honor, it is inconsistent with the limited
9 reference we have been able to obtain as we have been making an
10 effort to trace the defendant's finances.

11 On that subject, your Honor, the report does raise
12 concerns about whether the defendant has been fully transparent
13 about her finances. As one example, the defendant told
14 Pretrial Services that the New Hampshire property was owned by
15 a corporation, that she does not know the name of the
16 corporation, but that she was just permitted to stay in the
17 house. It is difficult to believe that that was a forthcoming
18 answer because it is implausible on its face and very
19 confusing, but the government has continued to investigate the
20 circumstances surrounding the purchase of that New Hampshire
21 property.

22 This morning, your Honor, I spoke with an F.B.I. agent
23 who recently interviewed a real estate agent involved in that
24 transaction in New Hampshire. The real estate agent told the
25 F.B.I. that the buyers to the house introduced themselves to

k7e2MaxC kjc

1 her as Scott and Janet Marshall, who both have British accents.
2 Scott Marshall told her that the -- that he was retired from
3 the British military and he was currently working on writing a
4 book. Janet Marshall described herself as a journalist who
5 wants privacy. they told the agent they wanted to purchase the
6 property quickly through a wire and that they were setting up
7 an LLC. Those conversations took place in November 2019. Your
8 Honor, following the defendant's arrest, the real estate agent
9 saw a photograph of the defendant in the media and realized
10 that the person who had introduced herself as Janet Marshall,
11 who had toured the house and participated in these
12 conversations about the purchase, was the defendant, Ghislaine
13 Maxwell.

14 That series of facts, which I just learned about this
15 morning, your Honor, are concerning for two reasons. First,
16 additionally, it appears that the defendant has attempted to
17 conceal an asset from the court, and at the very least she has
18 not been forthcoming in the course of her Pretrial Services
19 interview; and, second, it appears that the defendant has used
20 an alias and that she was willing to lie to hide herself and
21 hide her identity and we discussed the additional indicia in
22 our briefing your Honor. So that raises real concerns.

23 Moreover, the defendant's claims about her finances to
24 Pretrial Services should be concerning to the court for
25 additional reasons.

k7e2MaxC kjc

1 THE COURT: I'm sorry, Ms. Moe, if I may pause you
2 before moving on from those points.

3 There is a basic dispute within the papers as to, I
4 think, efforts similar to the ones you have described that are
5 efforts to hide from authorities, which would certainly be an
6 indication of risk of flight or whether, in light of the
7 notoriety and public interest that the case has generated
8 following the indictment of Mr. Epstein, whether it was an
9 effort to protect privacy and hide from press for privacy
10 reasons.

11 How does the government suggest that that factual
12 determination be resolved, if you agree that it should, and
13 what is your general response to the veracity of that
14 assertion?

15 MS. MOE: Yes, your Honor.

16 As we discussed in our reply brief, your Honor, in our
17 view, there is no question these circumstances are relevant to
18 the court's determination with respect to bail for a number of
19 reasons.

20 The first is, irrespective of the defendant's motive,
21 these facts make clear to the court that the defendant has the
22 ability to live in hiding, that she is good at it, that she is
23 willing to do it even if it compromises her relationship and
24 contacts with other people and, as the information provided by
25 the real estate agent underscores, she is good at it and that

k7e2MaxC kjc

1 she passes. In other words, even though, as defense claims,
2 that she is widely known, that there is press everywhere, she
3 was able to pass during the purchase of a real estate
4 transaction under a fake name and not be detected. So there
5 really can be no question that the defendant is willing to lie
6 about who she is, that she can live in hiding, that she has the
7 means to do so. All of those things should be extremely
8 concerning to the court, your Honor, as the court evaluates
9 whether the defendant has the ability and willingness to live
10 off the grid indefinitely. A year is an extremely long period
11 of time to live in hiding, undetected by the public. And so
12 all of those things are concerning.

13 With respect to the question of motive, your Honor,
14 the government submits the court need not reach that ultimate
15 issue, but we noted, your Honor, that there are indicia during
16 the circumstances of the defendant's arrest that suggested that
17 there was a motive to evade detection by law enforcement. But
18 the bigger picture, your Honor, is the defendant's --

19 THE COURT: Ms. Moe --

20 MS. MOE: -- ability --

21 THE COURT: -- I was surprised that that information
22 wasn't provided until the reply brief. Was there a reason for
23 that?

24 MS. MOE: Yes, your Honor. The government wanted to
25 be very careful to make sure we had full and accurate

k7e2MaxC kjc

1 information. So we were first notified about the circumstances
2 the morning of the defendant's arrest, but I wanted to
3 personally confer with the agent who was involved in breaching
4 the door and verify that before including that information in a
5 brief before the court. That's the reason for the delay, your
6 Honor.

7 THE COURT: Okay. But the government has done that
8 confirmation process and is confident of the information
9 provided and the basic contention there is -- the basic
10 contention there is that she resisted opening the door in the
11 face of being informed that authorities were seeking entry and
12 there is a suggestion of an effort to conceal location
13 monitoring of some type by placing a cell phone in foil of some
14 kind.

15 Could you explain what the government's understanding
16 factually is and what you think I should derive from that?

17 MS. MOE: Yes, your Honor.

18 And, with apologies, we were very careful to make sure
19 that the specific language in our briefing was accurate in
20 consultation with the agents, so I don't want to add additional
21 facts or speak extemporaneously about that; but, in short, that
22 is correct that the defendant did not respond to law
23 enforcement announcing their presence and directing her to open
24 the door; that, instead, she left and went into a separate
25 room.

k7e2MaxC kjc

1 And then, separately, the details about the cell
2 phone, as the court noted, are contained in our brief and we
3 submit that there could be no reason for wrapping a cell phone
4 in tinfoil except for potentially to evade law enforcement,
5 albeit foolishly and not well executed.

6 THE COURT: All right. Go ahead.

7 MS. MOE: Thank you, your Honor.

8 I believe I was discussing the defendant's finances,
9 which underscore the concern about the defendant's ability to
10 flee and about her questionable candor to the court. We submit
11 there are concerns there for two reasons, your Honor.

12 The first is that we learned that records relating --
13 reflecting to client information for a SWIFT bank include
14 self-reported financial information from the defendant. In
15 other words, when the account was opened, there were
16 disclosures made about the defendant's finances. In those
17 records, which are dated January 2019, the defendant's annual
18 income is listed as ranging from \$200,000 to approximately half
19 a million dollars. And both her net worth and liquid assets
20 are listed as ranging from \$10 million and above.

21 Second, as we noted in our reply, the defendant is the
22 grantor of a trust account in the same SWIFT bank with assets
23 of more than \$4 million as of last month. Bank documents
24 reflect that the trust has three trustees, one of whom has the
25 authority to act independently. One of those trustees is a

k7e2MaxC kjc

1 relative of the defendant and the other appears to be a close
2 associate.

3 Despite having put millions of dollars into this
4 trust, your Honor, and despite its assets being controlled by a
5 relative and close associate, the defendant mentions it not
6 once in her motion before the court or in her Pretrial Services
7 interview; and, in fact, despite the fact that the government
8 said in its opening brief that the defendant's finances and her
9 uncertain amount of wealth, including issues about whether her
10 wealth was stored abroad, are serious concerns with respect to
11 the defendant's risk of flight, the defendant's opposition does
12 not discuss this at all. There is no mention of the
13 defendant's finances and no effort to address those concerns
14 whatsoever.

15 In sum, your Honor, the court has been given virtually
16 no information about the defendant's possession of and apparent
17 access to extensive wealth. The court should not take that
18 concealment, your Honor, we respectfully submit, as an
19 invitation to demand further details, but instead to recognize
20 that if the court can't rely on this defendant to be
21 transparent at this basic initial stage, the court cannot rely
22 on her to return to court if released. In short, she has not
23 earned the court's trust.

24 Finally, your Honor, turning to the defendant's
25 proposed bail package, in light of all of the red flags here --

k7e2MaxC kjc

1 the defendant's demonstrated willingness and ability to live in
2 hiding, her ability to live comfortably beyond the reach of
3 extradition, her strong interactional ties and lack of
4 community ties, significant and unexplained wealth, and the
5 presumption of detention in light of very serious charges -- in
6 light of all that, your Honor, it is extremely surprising that
7 the defendant would propose a bail package with virtually no
8 security whatsoever.

9 In addition to failing to describe in any way the
10 absence of proposed cosigners of a bond, the defendant also
11 makes no mention whatsoever about the financial circumstances
12 or assets of her spouse whose her identity she declined to
13 provide to Pretrial Services. There is no information about
14 who will be cosigning this bond or their assets and no details
15 whatsoever.

16 The government submits that no conditions of bail
17 would be appropriate here. But it is revealing, your Honor,
18 that the defendant had both declined to provide a rigorous,
19 verified accounting of her finances and that she does not
20 propose that she pledge any meaningful security for her
21 release. She identifies no stable residence where she could
22 reside. Instead, she proposes, among other proposals, that she
23 stay at a luxury hotel in Manhattan, the most transient type of
24 residence. And it is curious, your Honor, that the defendant
25 offers to pay for a luxury hotel for an indefinite period and

k7e2MaxC kjc

1 yet does not offer to post a single penny in security for the
2 bond she proposes.

3 Your Honor, the defendant is the very definition of a
4 flight risk. She has three passports, large sums of money,
5 extensive international connections, and absolutely no reason
6 to stay in the United States to face a potential significant
7 term of incarceration.

8 The government respectfully submits that the defendant
9 can't meet her burden of overcoming the statutory presumption
10 in favor of detention in this case. There are no conditions of
11 bail that would assure the defendant's presence in court
12 proceedings in this case, and we respectfully request that the
13 court detain the defendant pending trial.

14 Thank you, your Honor.

15 THE COURT: Thank you, Ms. Moe.

16 Just to make explicit what is clear by the
17 government's written presentation and oral presentation, you
18 are not resting your argument for detention on dangerousness to
19 the community at all. It is resting on risk of flight,
20 correct?

21 MS. MOE: That's correct, your Honor.

22 THE COURT: All right. Thank you.

23 Ms. Moe, you have indicated that you have heard from
24 victims who are entitled, under federal law, to be heard at
25 this proceeding. Could you indicate -- I think you indicated

k7e2MaxC kjc

1 that you have a written statement and then that there is an
2 alleged victim who wishes to be heard. Is that correct?

3 MS. MOE: That is correct, your Honor.

4 THE COURT: Why don't you begin with the written
5 statement and then after that you can identify, as you like,
6 the alleged victim who wishes to be heard, and my staff will
7 unmute at that time that person so that they can be heard.

8 Go ahead.

9 MS. MOE: Thank you, your Honor.

10 As I mentioned before, your Honor, the government has
11 received a written statement from a victim who prefers to be
12 referred to as Jane Doe today in order to protect her privacy.
13 The following are the words of Jane Doe which I will read from
14 her written statement.

15 Jane Doe wrote:

16 "I knew Ghislaine Maxwell for over ten years. It was
17 her calculating and sadistic manipulation that anesthetized me,
18 in order to deliver me, with full knowledge of the heinous and
19 dehumanizing abuse that awaited me, straight to the hands of
20 Jeffrey Epstein. Without Ghislaine, Jeffrey could not have
21 done what he did. She was in charge. She egged him on and
22 encouraged him. She told me of others she recruited and she
23 thought it was funny. She pretends to care only to garner
24 sympathy, and enjoys drawing her victims in with perceived
25 caring, only to entrap them and make them feel some sense of

k7e2MaxC kjc

1 obligation to her through emotional manipulation. She was a
2 predator and a monster.

3 "The sociopathic manner in which she nurtured our
4 relationship, abused my trust, and took advantage of my
5 vulnerability makes it clear to me that she would have done
6 anything to get what she wanted, to satisfy Mr. Epstein. I
7 have great fear that Ghislaine Maxwell will flee, since she has
8 demonstrated over many years her sole purpose is that of
9 self-preservation. She blatantly disregards and disrespects
10 the judicial system, as demonstrated by her perjuring herself
11 and bullying anyone who dared accuse her.

12 "I have great fear that she may seek to silence those
13 whose testimony is instrumental in her prosecution. In fact,
14 when I was listed as a witness in a civil action involving
15 Maxwell, I received a phone call in the middle of the night
16 threatening my then two-year-old's life if I testified.

17 "I have fear speaking here today, even anonymously.
18 However, I have chosen to implore the court not to grant bond
19 for Ms. Maxwell because I know the truth. I know what she has
20 done. I know how many lives that she has ruined. And because
21 I know this, I know she has nothing to lose, has no remorse,
22 and will never admit what she has done.

23 "Please do not let us down by allowing her the
24 opportunity to further hurt her victims or evade the
25 consequences that surely await her if justice is served. If

k7e2MaxC kjc

1 she believes she risks prison, she will never come back. If
2 she is out, I need to be protected. I personally know her
3 international connections that would allow her to go anywhere
4 in the world and disappear at a moment's notice or make others
5 disappear if she needs to."

6 Your Honor, those are the words of Jane Doe.

7 THE COURT: All right. Thank you.

8 Ms. Moe, would you indicate how the victim who wishes
9 to be heard should be recognized?

10 MS. MOE: Yes, your Honor.

11 The government has been informed through the victim's
12 counsel that the victim wishes to speak in her true name, which
13 is Annie Farmer.

14 THE COURT: All right. I will ask my staff to please
15 unmute Ms. Farmer.

16 MS. FARMER: Can you hear me, your Honor?

17 THE COURT: I can, Ms. Farmer. You may proceed.

18 MS. FARMER: Thank you. I appreciate the opportunity
19 to speak.

20 I met Ghislaine Maxwell when I was 16 years old. She
21 is a sexual predator who groomed and abused me and countless
22 other children and young women. She has never shown any
23 remorse for her heinous crimes, for the devastating, lasting
24 effects her actions caused. Instead, she has lied under oath
25 and tormented her survivors.

k7e2MaxC kjc

1 The danger Maxwell must be taken seriously. She has
2 associates across the globe, some of great means.

3 She also has demonstrated contempt for our legal
4 system by committing perjury, all of which indicate to me that
5 she is a significant flight risk.

6 We may never know how many people were victimized by
7 Ghislaine Maxwell, but those of us who survived implore this
8 court to detain her until she is forced to stand trial and
9 answer for her crimes.

10 Thank you, your Honor.

11 THE COURT: Thank you, Ms. Farmer. All right.

12 And, Ms. Moe, is the government aware of any other
13 victims who are entitled to -- alleged victims who are entitled
14 to and wish to be heard at this proceeding?

15 MS. MOE: No, your Honor. Thank you.

16 THE COURT: And, Ms. Moe, again, just to confirm,
17 because there was allusion in the statements of the victims to
18 fear and danger, the government is not seeking the court to
19 make any findings regarding danger to the community in coming
20 to its ultimate conclusion regarding pretrial detention,
21 correct?

22 MS. MOE: That's correct, your Honor.

23 THE COURT: All right. Ms. Moe, anything further
24 before I hear from Mr. Cohen?

25 MS. MOE: No, your Honor. Thank you very much.

k7e2MaxC kjc

1 THE COURT: Thank you, Ms. Moe.

2 Mr. Cohen, you may proceed.

3 MR. COHEN: Thank you, your Honor. Thank you very
4 much for the opportunity to be heard and also for accommodating
5 us with regard to the briefing schedule. We appreciate that,
6 your Honor.

7 Your Honor, this is a very important proceeding for my
8 client. It is critical and we submit, as we laid out in our
9 papers, that under the Bail Reform Act and related case law,
10 none of which, by the way, was discussed in the government's
11 presentation, she is -- she ought to be released on a bail
12 package with strict conditions, your Honor.

13 And, frankly, in order to defend a case like this
14 during the COVID crisis, with the extent of discovery which was
15 discussed earlier in the proceeding, that's going to take the
16 government until November to produce to us, the notion of
17 preparing a defense with our client while she is in custody
18 under these conditions is just not realistic.

19 I would also like to take a moment, your Honor, to
20 address a few things. As we noted in our papers, our client is
21 not Jeffrey Epstein, and she has been the target of essentially
22 endless media spin that apparently the government has picked up
23 in its reply brief and in its presentation today, trying to
24 portray her before the court as a ruthless, aimless, sinister
25 person.

k7e2MaxC kjc

1 I do want to note, before I go further, to pick up on
2 something the court said. We have a proceeding now where the
3 government is dribbling out facts or what they claim are facts
4 that they could have and should have put in their opening
5 memorandum so we would have had an opportunity to address them
6 in writing before the court. That's not how this is supposed
7 to proceed, your Honor, and I thank your Honor for pointing
8 that out. Each --

9 THE COURT: But, Mr. Cohen, please, by all means, you
10 have had the reply in the time that I have as well. You
11 shouldn't hesitate to respond to any of those facts now.

12 MR. COHEN: I appreciate that, your Honor, and I'm
13 going to proceed by proffer. I would have preferred to be able
14 to submit something in writing, but obviously the way it was
15 done, we were deprived of that chance.

16 I also want to make clear that our client is not
17 Epstein. She is not the monster that has been portrayed by the
18 media and now the government. She is part of a very large and
19 close family, with extensive familial relations, extensive
20 friendships, extensive professional relationships. Many of
21 these folks are on the call today, your Honor, and thank you,
22 your Honor, for making that available, though not identified,
23 which is something one would normally do in a traditional bail
24 hearing, because of the very real concern that they have and
25 our client has about her safety and about her privacy and her

k7e2MaxC kjc

1 confidentiality, as your Honor pointed out. And as you will
2 see in a moment, that explains a lot of the spin the government
3 is putting on facts in this case.

4 Your Honor, people have received physical threats. My
5 client has received them. Most of those close to her have
6 received them. They have received death threats. They have
7 been injured in their jobs, in their work opportunities, in
8 their reputations, simply for knowing my client. It's real.
9 It's out there. The facts of all the steps the court had to go
10 through just to make the public access available to this
11 proceeding is also a reality.

12 There is a real thing out there having a very
13 significant impact on our client. There are folks who would
14 normally come forward as part of a bail package who your Honor
15 is aware of from the Pretrial Services report who can't now, at
16 least at this point, because of the safety and confidentiality
17 concerns. Since last week our firm alone and my colleagues at
18 Haddon Morgan have been besieged with e-mails and posts, some
19 of them threatening. This is all very real. The government
20 attempts to poo-poo it, to give it the back of the hand. It is
21 very real, and we submit it is a factor for the court to
22 consider in its discretion.

23 Before I go further, your Honor, I would like to go
24 through the 3142(g) analysis. But before I do that, I would
25 like to make one comment about the CVR -- CVRA proceeding under

k7e2MaxC kjc

1 377(1), and we understand that the court is following the
2 statute. The statute gives alleged victims the right to speak
3 through counsel, through the government, or directly, and be
4 heard, and we understand that, your Honor.

5 The question today before the court, we submit, is
6 whether or not our client could be released or should be
7 released on a condition or combination of conditions to assure
8 her appearance. And as to that question, the presentations
9 today do not speak, they do not speak to risk of flight, and
10 the courts have -- in this circuit have thought about and
11 researched what weight should be given to that. There is an
12 opinion by Judge Orenstein in the Eastern District, *United*
13 *States v. Turner*, from April 2005, not cited by the government,
14 in which the court, after carefully surveying the legislative
15 history and background of the CVRA and its interplay with the
16 bail reform statute, concluded, "In considering how to ensure
17 that the rights are afforded, I am cognizant that the new law
18 gives crime victims a voice but not a veto. Of particular
19 relevance to this case, a court's obligation to protect the
20 victim's rights and to carefully consider any objections that
21 victim may have never requires it to deny a defendant release
22 on conditions that will adequately secure the defendant's
23 appearance," going on to cite the Senate legislative history
24 that's being cited with approval of *United States v. Rubin*,
25 also an Eastern District case.

k7e2MaxC kjc

1 So we understand why the court has to follow this
2 process, but we submit that these presentations just are not
3 relevant to the determination before the court today. And,
4 again, we don't have spin. The big fact that the government,
5 Ms. Moe tried to put before you through the victim is that
6 supposedly someone had called in a civil action threatening the
7 two-year-old child. Notice how carefully that was phrased,
8 your Honor. It wasn't tied to Ms. Maxwell. It's more spin,
9 spin, spin.

10 So we are here to consider bail. We should consider
11 the statute. We should consider your Honor's guidance under
12 the statute. So let me just put that to one side. I determine
13 that that really disposes of the issue of what weight to give.

14 In turning to the statute, your Honor, turning to the
15 factors, I don't want to spend a lot of time on the standard,
16 because I know your Honor is very familiar with it, but I do
17 want to point out that, in an opening brief and reply brief and
18 now an oral presentation, the government has not once
19 represented the standard to your Honor nor the burden that it
20 has. And that is the statute, under 3142(c), says that "even
21 the case where there is not to be release ROR" -- which this is
22 not that case -- "the court shall order pretrial release
23 subject to the least restrictive condition or combination of
24 conditions." That as you now read, of course, in light of
25 3142(e), (f), and (g), the provisions on detention, that the

k7e2MaxC kjc

1 law of the statute, by its structure, favors release. The
2 Supreme Court has and the Second Circuit has advised us that a
3 very limited number of people should be detained prior to trial
4 because of the statute's structure, and the government nowhere
5 mentions that. It basically acts as if all it has to do is
6 invoke the presumption on the client and then we are done, and
7 that's just not the legal standing, your Honor.

8 They also say nothing about the burden, which is
9 discussed on a case written for the Second Circuit by Judge
10 Raggi, and also the *U.S. v. English* case. Without going into a
11 lot of detail, as the court is aware, the burden of persuasion
12 is the government's. It never shifts. The presumption can be
13 rebutted, and we submit it is here, and then it is the burden
14 of the government to show that the defendant is a risk of
15 flight and that there are no conditions or combination of
16 conditions to secure the release, which we submit they haven't
17 done here.

18 So let me turn, your Honor, if I may, to the factors
19 under 3142(g), and before I do that, I also want to address
20 some of the government's comments about the bail package. We
21 decided that we should come before your Honor with a package
22 that was set out subject, of course, to the ruling provided by
23 the court, subject of course to verification as to suretors by
24 Pretrial Services and the court. We didn't want to just walk
25 in and say, Judge, we should be entitled to bail, please set

k7e2MaxC kjc

1 conditions. So what we did is we went through all the high
2 profile cases in this courthouse in the past several years and
3 other cases, cases like *Madoff*, cases like *Dreier*, cases like
4 *Esposito*, where Judge Marrero ruled in 2018 relating to an
5 alleged member of organized crime, and we went through those
6 cases to find the conditions that were listed under 3142(c),
7 and in those cases that would we believe be relevant and
8 applicable here, and we believe we have listed them all. We
9 understand that of course they would be subject to
10 verification; and as we noted in our papers and I noted today,
11 if we could have a guarantee of safety, if we could have a
12 guarantee of privacy and confidentiality, and if the court
13 required it, we believe there are other suretors who we could
14 provide and perhaps other amounts of property as well. That is
15 an issue. It is a real issue in this case. It is something
16 the government is just avoiding, but it is real.

17 So let me talk now, your Honor, if I might, about the
18 3142(g)(3) factors, which are the factors relating to the
19 history of the defendant.

20 The government said --

21 THE COURT: Mr. Cohen, just before you move to that,
22 the three cases that you cited -- *Esposito*, *Dreier*, *Madoff* --
23 factually did any of those cases involve defendants with
24 substantial international and foreign connections?

25 MR. COHEN: No, I don't believe they did. The cases

k7e2MaxC kjc

1 that are relevant to that, which I was going to get to, your
2 Honor, are *Khashoggi, U.S. v. Khashoggi, U.S. v. Bodmer, U.S.*
3 *v. Hanson*, and *Sabhnani* itself, all of which involve defendants
4 with substantial connections.

5 And I might follow up on your Honor's question, when
6 you take off the spin and you take off the media -- and I'm
7 going to get to it in a moment, because your Honor is going to
8 allow me to respond -- here is their case: Defendant is a
9 citizen of more than one country, England and France, not
10 exactly exotic places. The defendant has three passports. The
11 defendant has traveled internationally in the past, not in the
12 past year. There is no refutation from the government on that,
13 and they have been all over her travel records. The defendant
14 has resided here in the past year. She has traveled
15 internationally and, according to the government, she has
16 financial means. I will get to that in a moment, Judge. But
17 let's assume for the purposes of this discussion that she has
18 financial means and not the lies that the government laid out.
19 What do those cases teach? They teach that that is something
20 the court can and should address in the bail conditions. They
21 teach that they may require stricter bail conditions. They
22 don't teach that that means there should be no bail at all. In
23 *Sabhnani*, a Second Circuit case, the allegation was that the
24 defendants have held two individuals in slavery for five years,
25 and they had many more international ties or international

k7e2MaxC kjc

1 travel than alleged as to our client, certainly in the past
2 year, and strict release was approved with strict bail
3 conditions.

4 In *Bodmer*, which was before Judge Scheindlin in 2004,
5 the defendant was a Swiss citizen, and Switzerland had taken
6 the position it would not extradite its citizens for
7 proceedings in the United States. And Judge Scheindlin
8 observed, well, if that becomes the test for bail, then no
9 citizen of Switzerland can ever get bail in the United States.
10 So, too, here. If that's the test for France, then no French
11 citizen, under the government's reasoning, could ever get bail
12 in the United States.

13 And in *Bodmer* it was even the allegation -- the case
14 was a fraud case -- the allegation was that the defendant who
15 was a Swiss attorney had, according to the government, been
16 opening up Swiss accounts overseas and that that was some form
17 of hiding. Even with all that, the court said what many courts
18 have said in this courthouse, to be addressed in the
19 conditions. Doesn't mean the government has carried its burden
20 of showing there is no combination of conditions.

21 In the *Khashoggi* case, written by Judge Keenan in
22 1989, this was a person of extraordinary wealth, way more than
23 anything the government alleges that our client has, he was,
24 according to the government, a fugitive, a Saudi citizen who
25 had not been in the United States for three years prior to his

k7e2MaxC kjc

1 arrest. That defendant was released on bail conditions, strict
2 bail conditions.

3 And I mention *Esposito*, which is the 2019 case from
4 Judge Marrero, that is a case in which the allegation was that
5 the defendant was a senior ranking member of organized crime
6 and had access to financial means as well.

7 But all of those cases, as well as *Madoff* and *Dreier*,
8 which I'm sure the court is familiar, with involved allegations
9 of defendants with hundreds of millions of dollars, in all of
10 those cases, the courts held that bail should be set subject to
11 strict conditions. And by the way, Judge, in all of those
12 cases, the defendants appeared for court. They all made
13 appearances and appeared for trial.

14 There are also cases from the context involving
15 pornography or sex crime allegations, such as the *Deutsch* case
16 coming from the Eastern District several years ago, the *Conway*
17 case in the Northern District of California. Again,
18 understanding those are the allegations, the decision was made
19 that release could be awarded on conditions.

20 You even had one recently in the Second Circuit that
21 I'm sure everyone is familiar with *United States v. Mattis*,
22 different setting, because that was a dangerousness case and
23 the government is not proceeding on dangerousness grounds, but
24 that is the case where the allegation is that two attorneys
25 threw a Molotov cocktail into a police car; challenge to bail

k7e2MaxC kjc

1 appealed by the government; decision of the court, release on
2 strict conditions. That is how the law works and comes out in
3 this area, but that's something, your Honor, that the
4 government did not address. And if the court determines that
5 the conditions that we have proffered are insufficient or need
6 further verification, as long as we can have some assurance of
7 safety and confidentiality, we would recommend that the court
8 keep the proceeding open, and we should be able to get whatever
9 the court needs to satisfy it. So that's the legal analysis
10 that was absent in the government's presentation today and its
11 papers.

12 Let me now, because I have to, because this has been
13 put out before your Honor in, of course, a public proceeding,
14 let me respond to some of the allegations made for the first
15 time in the reply brief, trying to spin facts to make my client
16 look sinister to your Honor.

17 Here is fact one: She is a risk of flight because she
18 has been hiding out. Well, let's think about this. She has
19 been litigating civil cases in this courthouse and other parts
20 of the country since 2015, denying, as she does here before
21 your Honor, that she did anything improper with regards to
22 Mr. Epstein. We submit, your Honor, that is the opposite of
23 somebody who is looking to flee. And in fact, one of the
24 people who spoke before your Honor is a plaintiff in one of
25 those lawsuits seeking millions of dollars from our client and

k7e2MaxC kjc

1 seeking millions of dollars from a fund that's being set up.
2 Something for the court to consider.

3 She has also, as we mentioned, remained in the United
4 States, even though she has known of the investigation. How
5 could she not? It's been unbelievably public for the past
6 year. And we have been in regular contact with her -- with the
7 government. Your Honor asked that question, very careful
8 question from the court, and we got a shimmy from the
9 government in response. We have been in contact with them,
10 conservatively -- as we checked last night, because we thought
11 you might ask -- conservatively eight to ten times in the past
12 year, all for the same purpose, to urge them not to bring this
13 case, which shouldn't have been brought.

14 The notion that experienced counsel, and counsel at
15 Haddon Morgan is also experienced, is in regular contact with
16 the government, would surrender their client, and they turn
17 around and deny that to the court and deny that voluntary
18 surrender would and could have and should have been possible
19 here is, we submit, another factor for the court to consider.

20 So let me turn to the reply brief.

21 THE COURT: Sorry. If I may, Mr. Cohen, I just want
22 to make sure I understand that last point. Are you saying that
23 defense counsel indicated to the government that, should there
24 be an indictment returned, you were seeking to arrange a
25 voluntary surrender? Is that the contention?

k7e2MaxC kjc

1 MR. COHEN: To be precise, we were urging them not to
2 return an indictment and saying we were always available to
3 speak. And, frankly, your Honor, I have been doing this kind
4 of work for 33 years, everyone knows what that means.

5 THE COURT: So you were implying --

6 (Indiscernible crosstalk)

7 THE COURT: You were implying that, though you were
8 urging --

9 MR. COHEN: Yes.

10 THE COURT: -- or seeking to forestall the indictment,
11 should there be an indictment, you were implying that you
12 should be contacted for voluntary surrender.

13 MR. COHEN: Yes, of course. And the day after our
14 client was arrested, we got a note from the government sending
15 the application to detention addressed to us and Haddon Morgan
16 saying your client, Ms. Maxwell, was arrested yesterday. So
17 there was no doubt that we represented her along with Haddon
18 Morgan. There was no doubt that we were available and could
19 have been contacted and worked this out. There was no doubt
20 that we are confident we would have.

21 Let me turn to the reply brief and the effort to throw
22 some more dirt on my client that we again submit should not be
23 considered as part of the governing legal standards here and
24 the precise question before the court. You heard it today and
25 in the brief we hear that at the time of her arrest, the agents

k7e2MaxC kjc

1 breached the gate and they saw her through the window try to
2 flee to another room in the house, quickly shutting the door,
3 and that she -- agents were ultimately forced to breach the
4 door. So here is the spin. It's as if the government is just
5 sort of giving it for the media, here is the spin given to your
6 Honor to try to influence your Honor's discretion. What
7 actually happened? At least the court has said we can respond
8 by proffer. We weren't given a chance to respond in writing.
9 My client was at the property in the morning in her pajamas.
10 She was there with one security guard. Two people in the
11 house. The front door was unlocked. All the other doors of
12 the house were open. The windows were open. Dozens of agents
13 came storming up the drive, creating a disturbance. My client
14 had to hire security because of the threats to her that I have
15 already relayed before, and the protocol was that in a
16 disturbance to go into new room. That's all she did. Not
17 running out of the house, not, you know, looking for some
18 secret tunnel, went in the other room. The F.B.I. knocked down
19 the door which, by the way, was open, and my client surrendered
20 herself for arrest. That's far from the picture painted by the
21 government.

22 Let me turn to another thing that the government
23 mentioned today in an effort to sort of spin the facts, make
24 everything look sinister with respect to my client. The
25 government said in its opening brief, well, Judge, she is

k7e2MaxC kjc

1 hiding. She is a risk of flight because she changed her e-mail
2 and phone number. That's what we heard in the opening brief.
3 Well, what happened? Something the government, frankly, should
4 know about, because it was certainly public, last year, in a
5 civil litigation, in August of 2019, right around the time of
6 the arrest of Mr. Epstein, the Second Circuit ruled that
7 certain records in one of the civil cases should be unsealed
8 and released to the public. That was done. There was no stay
9 at the moment. The demand was issued, and the documents were
10 released. Certain of those documents were supposed to be
11 redacted and sometimes they were and sometimes they were not,
12 documents including e-mail addresses, Social Security numbers,
13 names, phone numbers, the sorts of things your Honor, I am
14 sure, has to deal with all the time in these kinds of
15 situations.

16 But as it turned out, for whatever reason, some of the
17 documents were not redacted and her e-mail address was
18 revealed. Shortly after that, she starts getting strange
19 e-mails. Her phone is hacked, and she had to change e-mails
20 and change the account.

21 Now she has got a phone that has legal materials on
22 it, correspondence with her counsel in civil litigation that's
23 been hacked, so she keeps it. Why does she keep it? Because
24 she is in civil litigation. Her obligation is to keep
25 evidence, not destroy it, and is advised that a way to keep it

k7e2MaxC kjc

1 from being hacked, again, is to put it in the equivalent of a
2 Faraday bag, whether it be tinfoil or the bags they now make in
3 briefcases, and that's it. That's all that she does. And I
4 guarantee to your Honor, given the tenor of the government's
5 presentation, that had she said, well, this phone was hacked,
6 I'm just going to throw it away, the government would be
7 standing before your Honor today say, ah-ha, she destroyed
8 evidence, that adds to risk of flight. And she had she put it
9 in a safe deposit box, rather than to destroy it, they would be
10 saying we cracked into a safe deposit box, your Honor. This is
11 evidence of a risk of flight. It just does not fit the test,
12 we submit.

13 And the last point on this, your Honor, which,
14 frankly, in some ways is the most telling point of all, the
15 agents do a security sweep, considering this is a house where
16 there are two people in it -- and I will put that to one side
17 for a moment -- they talk to the security guard, apparently now
18 they are going to do the thing multiple times because the
19 government is dribbling out facts, and they say, well, who
20 lives in the house? Ms. Maxwell does. Okay? She lives in the
21 house. What do you -- how do you get groceries and so forth?
22 I go out and get them for her.

23 So let's stop and think about this, your Honor. The
24 government's allegation is that the person who is aware of a
25 criminal investigation in the United States, has her counsel in

k7e2MaxC kjc

1 regular contact with the government, is removed in a property
2 in the United States. That's the opposite of hiding. So we
3 think that those kinds of facts, I'm sure, your Honor, if your
4 Honor decides to keep the proceedings open and give us a chance
5 to come on some issues, I'm sure we will have some more facts
6 tomorrow and the next day, all with the disclaimer, we just
7 learned this, your Honor. They have been investigating this
8 case for ten years, your Honor, okay?

9 So let me turn now to another factor that the
10 government made argument about briefly, two more factors under
11 31(g)(3), the history and characteristics of the defendant. We
12 heard several times that there was a -- that detention should
13 be warranted because there is a perjury charge. Very quickly,
14 your Honor, we submit this does not tip the balance in the 3142
15 analysis that the court has to perform.

16 First and foremost, the defendant is, of course,
17 presumed innocent; and, secondly, the allegation and nature of
18 the perjury, if the court has been through the indictment, is
19 someone who denies guilt, who says they are innocent, is asked
20 in a deposition did you do that and says no, the government
21 charges them with perjury. That is not -- other than the fact
22 that it's an indicted charge, they are still entitled to the
23 weight the court would give a not indicted charge. That's all
24 the weight it should be given .

25 Let me turn to another factor that the government

k7e2MaxC kjc

1 mentioned in its presentation, both in its papers and today,
2 that relates to 3142(g)(3), which is the defendant's financial
3 situation.

4 Again, when you look at the case law, which is not
5 addressed by the government at all, this is a person who has
6 passports that can be surrendered, who has travel that can be
7 restricted, who has citizenship that the courts have taking
8 account of, and does have financial means. Does she have the
9 financial means that the government says she has? We doubt it.
10 But does she have hundreds of millions of dollars like those in
11 the *Madoff* and *Dreier* case? No.

12 But it doesn't matter. Even if the court were to
13 assume for purposes of today's proceeding that she has the
14 means that the government claims she does, it does not affect
15 the analysis. That is to be addressed in conditions, to be
16 addressed if the court requires it, through verifications and
17 further proceedings before the court.

18 And let me just address some of the allegations made
19 in the government's brief about her financial situation. The
20 government goes out and arrests our client even though she
21 would have voluntarily surrendered, arrests her the day before
22 a federal holiday, so she spends extra time in the
23 New Hampshire prison before being transported here, and then
24 says, how come you don't have a full account of your financial
25 condition? How come, when Pretrial Services asked about it,

k7e2MaxC kjc

1 you can't, off the top of your head, explain your financial
2 condition to them? You must be lying. That assertion is
3 absurd.

4 We have been working since our client was detained,
5 with our client, trying to access family members to put, as
6 best we could, a financial picture before the court to the
7 extent it is relevant to this application and only this
8 application. This bail proceeding should not turn into some
9 mini investigation of our client's finances. The government
10 has had ten years to investigate my client.

11 Let me address some of the specific allegations in the
12 government's brief. They point to a sale of property in 2016.
13 According to the government, the property was sold for \$15
14 million. There is no secret about that. Those records are out
15 there. The government claims our client cleared \$14 million
16 from that in 2016 and apparently has it all today, which would
17 probably make it the first New York real estate transaction to
18 that effect. There has been liabilities. There has been
19 expenses. Our client has been through extensive, substantial
20 litigation all over this country denying these claims. We
21 think the number is far less than what the government asserts.
22 But even taking that number, it's a number far lower than that
23 in *Khashoggi*, far lower than that in *Dreier*, far lower than in
24 many cases, and the impact of that, in the court's discretion,
25 should be addressed by bail conditions.

k7e2MaxC kjc

1 The government also says, well, she has 15 different
2 bank accounts -- and here we get some hedging language -- that
3 are by or associated with her. No detail, no explanation to
4 the court, just more dirt. Well, she has three bank accounts
5 that she disclosed. She believes that there are more, for
6 example, with respect to the not-for-profit that she ran for
7 almost a decade before she was forced to shut it down because
8 of the issues in the media and the attention and the firestorm.
9 So it is some number less. And if it's important to the court,
10 we will do our best to pull it together. But under the
11 relevant cases, it doesn't change the analysis.

12 And then we go through the last one, your Honor. They
13 say in their brief that she did transfers of funds. One was a
14 transfer of 500,000. We believe that what that is was a bond
15 maturing. So when a bond matures, it is transferred out.

16 And then there was another one, and the government
17 sort of changes its mind between its opening brief and its
18 reply brief and I'm sure by tomorrow they will have some new
19 speculation for your Honor, but essentially let's call it a
20 several hundred thousand transfer out of an account in June
21 and July of 2019. What's that refer to? It refers to one of
22 the themes we have been talking about in our submission and
23 today your Honor. When Mr. Epstein was arrested, it had all
24 kinds of effects on our client, one of which was that the bank
25 in question referenced in the government's submission dropped

k7e2MaxC kjc

1 her. Well, when the bank drops you, you have to transfer your
2 funds out. That's true. That's what happened. So there is
3 nothing in there that's sinister, there is nothing in there
4 that shows an intent to evade, an intent to evade, and nothing
5 there that we think warrants detention.

6 One last point on the financial stuff, your Honor, if
7 I might. In the reply brief, we get a new allegation that an
8 SDAR, a foreign filing was made in 2018 and 2019, disclosing
9 that our client had a foreign bank account. Let's stop there.
10 Our client makes a legally required filing with the Treasury
11 Department, obeys the law, and discloses a foreign bank
12 account, and the government is claiming that's evidence of
13 hiding. This is all upside-down, your Honor. These are not
14 factors to be considered in exercising your discretion under
15 3142.

16 Let me turn very quickly to the other two factors that
17 are relevant for today's purposes because, as your Honor has
18 pointed out, the government is not proceeding on a
19 dangerousness claim. That is the (g)(1) and (g)(2) factors,
20 the nature and circumstances of the case, and the weight of the
21 evidence.

22 Here, I think we -- if you bear with me a moment, your
23 Honor, here, one thing to keep in mind is an observation
24 Judge Raggi made in the *Sabhnani* case, at page 77, where she
25 said, "The more effectively a court can physically restrain the

k7e2MaxC kjc

1 defendant, the less important it becomes to identify and
2 restrain each and every asset over which defendants may
3 exercise some control in order to mitigate risk of flight." So
4 if the court -- and we have suggested them, but they may be
5 modified by the court -- can put in place stringent bail
6 conditions, we don't need to have a side-long, month-long
7 hearing about my client's assets which is just designed to keep
8 her in detention. That was an observation by Judge Raggi in
9 *Sabhnani*.

10 Judge, very quickly on the nature and circumstances of
11 the offense and the weight of the evidence, we don't think,
12 your Honor, this is the place to litigate legal motions. This
13 is a bail hearing. It is not the place to litigate complex
14 legal questions that we will be presenting to your Honor. It's
15 very soon on the motion schedule, and we thank the court for
16 agreeing to the schedule. But there are a few things that are
17 worth pointing out.

18 We believe there are very significant motions here
19 that will affect whether this indictment survives at all or the
20 shape of this indictment and, given the government's
21 representation that it is not planning to supersede, will
22 affect the shape of the entire case, or any case at all that
23 proceeds before the court at trial, if there is a trial. That
24 is exactly what we submit the court can consider, again, in
25 exercising its discretion as to the weight of the evidence.

k7e2MaxC kjc

1 We believe there are significant motions relating to
2 the reach of the NPA, which we are not going to litigate here
3 before your Honor in a bail proceeding, that are not even
4 foreclosed by the cases the government does cite to you. They
5 cite to you the -- I'm going to skip this one, the *Annabi* case,
6 A-N-N-A-B-I case, which says, "The plea agreement binds only
7 the office of the U.S. Attorney for the district in which the
8 plea is entered unless it affirmatively appears that the
9 agreement contemplates a broader restriction," and that in part
10 is going to be our argument. So we will make it to your Honor
11 at the appropriate time. For today's purposes, it should be in
12 the mix in evaluating the weight of the evidence as should the
13 points I just made about the perjury charge and we think that
14 there are other significant legal challenges to the indictment.

15 We also think there are significant issues with the
16 weight of the evidence. The government chose to indict conduct
17 that's 25 years old, your Honor. You will see when you get our
18 motions that this, we think, is an effort to dance around the
19 NPA, to come into an earlier time period, a related time
20 period. It's all tactics. That's all this is about. This
21 case is about tactics. It's an effort to dance around the NPA.
22 But the fact of the matter is the government --

23 THE COURT: Mr. Cohen, I'm sorry, by that do you mean
24 that the time period charged is not covered by the NPA.

25 MR. COHEN: Right. Exactly. There is going to be

k7e2MaxC kjc

1 litigation before your Honor about what is in the NPA, and the
2 government, we expect, is going to take the position that
3 unlike '07 is covered and nothing else. We disagree with that,
4 which we will lay out for your Honor. What do they do? They
5 decide we will reach back and indict '94 to '97, totally
6 tactical, your Honor. So now we have a case where the conduct
7 is 25 years old, no tapes, no video, none of the sort of things
8 you would expect in that age of case, that we are going to have
9 to defend, and we are going to defend. And I think it goes to
10 the court's consideration of the weight in the context of the
11 only application that's before your Honor, which is how to
12 weigh the 3142 factors with the structure of the statute, with
13 the guidance of the Second Circuit and the Supreme Court, which
14 is in favor of bail, in favor of bail on appropriate
15 conditions.

16 So we submit that the package we laid out for the
17 court is sufficient that we are certainly willing if the court
18 deems it necessary to leave the proceeding open and we think we
19 could be back before the court within a week if that is what
20 the court wants or there is more detail which has been hammered
21 by the fact that our client has been, by design, by design,
22 kept in custody. And let me just give your Honor a little
23 flavor.

24 THE COURT: Wait, Mr. Cohen. I missed that last point
25 could you repeat it, please.

k7e2MaxC kjc

1 MR. COHEN: I'm sorry. If the court desires to leave
2 the proceeding open for a week and allow us to come back, if
3 the court has concerns about the number of suretors, for
4 example, verification information, information about financial
5 issues, we think that, now that we have some ability to breathe
6 a little bit, that we should be able to pull this together for
7 the court's consideration. We came forward with the best
8 package we could put together on a limited notice with a client
9 who was arrested, held in custody, has been since she came to
10 the MDC held in, I will call it, the equivalent of the layman's
11 term of solitary confinement. There is probably a BOP word,
12 like administrative seg., or some other word they have for it
13 now.

14 We have had a client who has been kept alone in a room
15 with the lights on all the time, is not allowed to speak with
16 us in the jail at all, wasn't allowed to shower for 72 hours,
17 had her legal materials taken away from her, only recently
18 given back. So working with that, we have been trying to
19 answer questions about financial situation and others, but it
20 is very difficult, your Honor, under circumstances that are of
21 the government's creation, of the government's creation, and
22 we --

23 THE COURT: So I do want to understand that point. I
24 think that's the "by design" point that you are making. Just
25 for clarity, I understand that there was consent to detention

k7e2MaxC kjc

1 originally without prejudice obviously for precisely the
2 proceeding we are having, but it sounded like you were
3 suggesting that her current detention was in some way by design
4 to prevent you from providing a full picture of her financial
5 situation. Is that the implication you are making?

6 MR. COHEN: No, I am not saying that, your Honor. I
7 am not going that far. What I am saying is, when you have a
8 client who will voluntary surrender, who is staying in the
9 country despite an investigation, and the government instead
10 chooses to arrest her and detain her, that limits in the early
11 instances your access to the client. It is complicated by the
12 COVID crisis and the other factors your Honor has pointed out
13 in *Stephens* and in *Williams-Bethea*, and so it is very hard for
14 us to pull together this financial information, and we have
15 done it as quickly as we could before the court. But the
16 notion that my client should have been able to answer off the
17 top of her head the questions from Pretrial Services about a
18 real estate transaction, for example, just doesn't make any
19 sense. That's the point we are making.

20 THE COURT: Okay.

21 MR. COHEN: One last point in that regard, your Honor,
22 in the schedule we set today -- thank you, your Honor, for
23 approving that -- the government is saying that it needs at
24 least until November to complete all discovery, including
25 electronic discovery. They have told us that there are two

k7e2MaxC kjc

1 investigations. There is the investigation of our client and
2 there is the investigation of Mr. Epstein. And they are, in
3 the government's words, in our words together, voluminous
4 materials. We haven't seen any of it yet, but voluminous,
5 including voluminous electronic materials. The notion that we
6 would be able to in any meaningful way review these with our
7 client to prepare the case for motion and for trial under the
8 current pandemic situation is just not realistic. It is not
9 meaningful. It is not fair. And I should say, as your Honor
10 noted, in the *Stephens* case, we are not faulting the Bureau of
11 Prisons. We are not faulting the Marshal Service. We
12 understand they are doing the best they can under the
13 circumstances. But this is just not realistic. We have
14 conduct that's alleged to be 25 years old. You have extensive
15 discovery that's going to take the government, if they hit the
16 deadlines your Honor set -- and we all know that sometimes it
17 doesn't happen -- four and a half months to provide, and the
18 government wants our client to remain in custody that whole
19 time, without being able to meet with us in person, with
20 limited access in some form of administrative seg., apparently
21 because they are afraid of what happened with Mr. Epstein, I
22 don't know, and it is just not a realistic way to prepare a
23 case, particularly, your Honor, when, as we submit, the
24 conditions and combination of conditions to secure her release
25 can be satisfied here under your Honor's guidance.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

k7e2MaxC kjc

1 And in response to that, the government said, well,
2 too bad, COVID crisis, too bad, Ms. Maxwell, we are not going
3 to let you out. We are not going to let you out because you
4 might get infected, we are not going to let you out because,
5 you know, because it will be tough preparing your trial. And
6 they cite to your Honor, in reply, two pages of cases, very
7 limited parentheticals. If you actually read those cases, they
8 are totally different from our situation, your Honor. The
9 cases they cite on health risks in the prison environment, they
10 cite 14 cases, 12 of them are dangerousness cases, people who
11 are convicted of multiple felonies, including weapons felonies.
12 The courts in those cases determined the COVID factors do not
13 outweigh that analysis. They cite nine cases on the
14 preparation and access to counsel. Several of them are
15 dangerousness cases, and the other ones that have some
16 discussion of flight risk are so extremely different from our
17 case as to not be relevant.

18 Judge, I don't know how we could possibly prepare this
19 case, getting four months of discovery, including electronic
20 discovery, and in over 25 years of conduct, with a client who
21 is in custody, who we can't meet with in person. And I'm not
22 faulting the BOP. I understand why they have to do what they
23 have to do, and your Honor has made the same point, but it is
24 just we have to be in the real world here. We have to --

25 THE COURT: Whether defendants are detained because of

k7e2MaxC kjc

1 risk of flight or dangerousness, they are still entitled to the
2 same Sixth Amendment rights to access defense counsel to
3 prepare their case.

4 MR. COHEN: Of course, your Honor. My point was a
5 more narrow point. My point is that the facts in those cases
6 are different from our case in a meaningful way and the court
7 was doing a different evaluation. That was the point I was
8 making on this case.

9 So in conclusion, we believe this is a compelling case
10 for bail. We believe that the government, which has the burden
11 of persuasion that never shifts, has not made a showing as
12 required, that our client is a risk of flight. When you
13 consider the risk, as Judge Raggi put it, in *Sabhnani*, the
14 actual risk of flight, not fantasy and not speculation, when
15 you consider that the only factors they really point to are
16 ones that the cases have already addressed, such as
17 international travel and passports.

18 We also submit that the government has not carried its
19 burden of showing there is no condition or combination of
20 conditions that secure release.

21 So we would ask the court to grant bail today. And if
22 the court needs more information from us, we would respectfully
23 request that the court leave the proceeding open for a week so
24 that we can try to satisfy the court because we want to.

25 Thank you, your Honor, for your time.

k7e2MaxC kjc

1 THE COURT: All right. Thank you, Mr. Cohen.

2 Ms. Moe, would the government like a brief reply?

3 MS. MOE: Yes, your Honor. Thank you very much.

4 Your Honor, I want to begin by addressing head on the
5 notion that the government's presentation in this case is
6 somehow about spins or about throwing dirt or about the media.
7 Your Honor, my colleagues and I are appearing today on behalf
8 of the United States Attorney's Office of the Southern District
9 of New York. Our presentation of the defendant's conduct is
10 detailed in an indictment that was returned by a grand jury in
11 this court. These are the facts. It is not dirt. It is not
12 spin. That is the evidence and that is what we have proffered
13 to the court.

14 And the notion that anyone could read the indictment
15 that has been returned in this case and now reach the
16 conclusion that an adult woman, cultivating the traffic of
17 underage girls, knowing that they will be sexually abused and
18 exploited by an adult man, and conclude that that is chilling
19 conduct, that is, on the face of the indictment, your Honor.

20 Turning to the facts we have proffered to the court
21 about the defendant's finances, and particularly about the
22 defendant's conduct in hiding, it appears, your Honor, that it
23 is undisputed that the defendant was living in hiding and took
24 those actions. There cannot be any spin or characterization of
25 this spin. Those are the facts that appear to be undisputed.

k7e2MaxC kjc

1 Turning to several specific points, your Honor, that I
2 would like to respond to. I want to address the notion that
3 the defendant would have surrendered if the government had
4 asked her to. As defense counsel conceded, no offer along
5 those lines was ever made. And of course the government
6 doesn't have to accept the defense counsel's representation
7 that their client would surrender.

8 In fact, the fact that the government took these
9 measures to arrest the defendant reflects how seriously the
10 government takes the risk of the defendant of flight. Why on
11 earth would the government notify the defendant through her
12 counsel that she was about to be indicted and arrested if the
13 government had serious concerns that she was a risk of flight?
14 That is exactly what occurred here.

15 In addition, it is interesting that defense counsel
16 notes that it should have been obvious to the government that
17 the defendant would have surrendered when, at the same time, in
18 civil litigation in this district, defense counsel declined to
19 accept service on behalf of plaintiffs who were seeking to sue
20 the defendant in connection with some of these allegations, and
21 they were required to seek leave of the court to serve the
22 defendant through their counsel.

23 Your Honor, turning to the question of the defendant's
24 finances there is still at this point no substantive response
25 regarding defendant's finances or about the lack of candor to

k7e2MaxC kjc

1 the court, significantly.

2 And while we recognize that it appears that the
3 defendant's extensive resources may be in complicated banking
4 records, at a basic level, the defense argument is that she
5 cannot remember off the top of her head just how many millions
6 of dollars she has. That should cause the court serious
7 concern.

8 A bail hearing, your Honor, is not an opportunity for
9 the defendant to slowly reveal information until the court
10 deems it sufficient. That is not sufficient process here.
11 That is not appropriate. This information is coming out in
12 dribs and drabs, and defendant should not be in a position to
13 slowly but surely concede, as the government reveals, that she
14 has been less than candid with the court about her finances.
15 There are serious concerns here.

16 With respect to the notion that the defendant could
17 just surrender her passports, there are of course no
18 limitations this court could set on a foreign government
19 issuing travel documents to defendant or accepting her if she
20 were to enter into that country.

21 And finally, your Honor, with respect to the case law
22 that defense has cited, they ignore the obvious comparator
23 case, which is Judge Berman's decision regarding Jeffrey
24 Epstein, who was arrested both on risk of flight grounds and on
25 dangerousness grounds. And as Judge Berman detailed, the

k7e2MaxC kjc

1 detention was appropriate in that case on risk of flight alone.
2 And, again, that conduct was -- at that point significant time
3 had passed, and Jeffrey Epstein was not a foreign citizen.

4 I want to respond with respect to the NPA. At this
5 point, your Honor, the defense has articulated no legal basis
6 to suggest that the defendant is shielded by the nonprosecution
7 agreement, and it simply doesn't make sense that the decision
8 in this case is somehow tactical to avoid concerns about the
9 NPA, when the government charged Jeffrey Epstein with conduct
10 that fell within the scope of the time period within the
11 nonprosecution agreement and stated before the court in
12 connection with bail proceedings in that matter that this is
13 the government's strong view that that agreement does not bind
14 this office whatsoever with respect to any kind of conduct or
15 any kind of individual. That agreement does not bind this
16 office whatsoever.

17 Your Honor, in short, it is important for the court to
18 evaluate the question of bail given the totality of the
19 circumstances. The defense's argument, in essence, attempts to
20 view each of the government's arguments as absolute. But when
21 you review the totality of the circumstances -- the defendant's
22 extensive international ties, her conduct over the past year,
23 her unknown finances and unwillingness to be more candid with
24 the court about her resources to flee, her specific bail
25 proposal which provides absolutely no security to the court --

k7e2MaxC kjc

1 it is clear that defendant has not met her burden to rebut the
2 presumption of detention in this case. The government urges
3 the court to detain this defendant, consistent with the
4 recommendation of Pretrial Services and the request of the
5 victims. It is important, your Honor, that there be a trial in
6 this case, and the government has serious concerns that the
7 defendant will flee if afforded the opportunity.

8 Thank you, your Honor.

9 THE COURT: Briefly, Ms. Moe, just a couple of legal
10 questions.

11 Mr. Cohen argued that you failed to address directly
12 the standards, the burdens under the statutory provision, and
13 that you have avoided the fact of the government continuing to
14 carry the burden by a preponderance of the evidence with
15 respect to risk of flight and whether there are measures that
16 could assure appearance. Do you dispute anything legally
17 suggested by Mr. Cohen in terms of the standard that applies?

18 MS. MOE: Your Honor, the government submits that the
19 standard is clear. It is the defendant's burden of production
20 to rebut the presumption that there are no set of conditions
21 that could reasonably assure her continued appearance in this
22 case. The government has the ultimate burden of persuasion,
23 but it is the defendant's burden of production. She has failed
24 to meet that burden for the reasons we set forth in our
25 briefing and arguments today.

k7e2MaxC kjc

1 THE COURT: Okay.

2 And then the other legal question I had, I think
3 Mr. Cohen began his presentation by noting -- by raising case
4 law suggesting the lack of relevance of the statements of the
5 alleged victims, although fully recognizing their entitlement
6 under the law to be heard. What is the government's position
7 with respect to the relevance of the alleged victim statements
8 in the 3142 analysis?

9 MS. MOE: Your Honor, the government has not proffered
10 victim's testimony or information in an effort to support its
11 motion. To the contrary, the victims have appeared consistent
12 with their rights under the Crime Victims Rights Act. Of
13 course, as we noted in our reply brief, it is very important to
14 the government that the victims receive justice in this case
15 and that there be a trial so that that could happen. That is
16 very important to the government, and we respectfully submit
17 that the court should take that into account. However, again,
18 the victims' participation in this proceeding is pursuant to
19 their rights under the Crime Victims Rights Act. It is not
20 part of the government's presentation in this case.

21 THE COURT: Okay. So I should not consider it --
22 should not consider the substance of the statements in the
23 overall bail analysis.

24 MS. MOE: Your Honor, with respect to the nature and
25 circumstances of the offense, the offense conduct, the

k7e2MaxC kjc

1 government submits that the statements of the victims certainly
2 shed light on the gravity of the offense conduct, the harm it
3 has caused, and how serious that conduct is. The court can and
4 should take that into account. My point was a procedural one;
5 that it is not the case that the government is submitting this
6 as evidence in support of its motion, but it is certainly the
7 case that the victims' experiences, the harms that they have
8 been caused can be considered by the court with respect to the
9 nature and circumstances of the offense conduct, which we
10 submit is gravely serious.

11 THE COURT: All right. Thank you.

12 Mr. Cohen, very briefly, any final points?

13 MR. COHEN: Yes, your Honor, very briefly. I won't
14 get into it, but I don't think she just answered your question
15 about what they are doing with respect to the CVRA victims, but
16 I will leave that to the court.

17 Just very quickly, two points, your Honor.

18 The government says in its response now that the case
19 to be relied upon and distinguished is *U.S. v. Epstein*. They
20 didn't raise it in their opening memorandum or their reply or
21 in their oral presentation before your Honor. To the extent
22 your Honor considers it, and we have certainly looked at it and
23 the transcript of the proceeding before Judge Berman, most of
24 that case is about dangerousness, your Honor, which is
25 something the government is expressly not proceeding under here

k7e2MaxC kjc

1 because the conduct is 25 years old, among other reasons.

2 And as to the risk of flight factors, Mr. Epstein had
3 a prior felony conviction for conduct similar to that alleged
4 in the indictment. The package before Judge Berman was only
5 two suretors, and any properties that were offered to
6 Judge Berman at the proceeding were already subject to
7 forfeiture and so could not be proposed. So it is a very, very
8 different situation in that case which was not raised by the
9 government, and that's why we didn't address it.

10 The last point which I meant to raise earlier, your
11 Honor, and I will end with this, and I should have raised it
12 earlier, what we sometimes see in bail cases, and I'm sure your
13 Honor has seen this, is the government says, well, the
14 defendant was hiding and we have evidence, your Honor, that the
15 defendant was making plans to leave the country. That is the
16 situation, frankly, in the *U.S. v. Zarger* case, the case by
17 Judge Gleeson in 2000, that the government cites in its brief,
18 but of course doesn't discuss the facts. There is nothing to
19 that effect here. To the contrary, the defendant, our client,
20 is sitting in New Hampshire at the time of the arrest. So
21 there is no evidence that there was some sort of imminence for
22 the court to consider.

23 So not to repeat all the arguments we made, we thank
24 the court for your time and for reading the submissions and
25 listening, and we just think, Judge, when you step back, the

k7e2MaxC kjc

1 concerns raised by the government can be addressed, they have
2 not carried their burden, and this is really a case that should
3 be subject to strict bail conditions to be set by the court,
4 among other things, to give us any reasonable chance of
5 fighting this -- preparing and fighting this case to trial.

6 Thank you, your Honor.

7 THE COURT: All right. Thank you, counsel.

8 I am prepared to make my ruling.

9 Several provisions of federal law govern the court's
10 determination whether to detain the defendant or release her on
11 bail pending trial. A court must apply that law equally to all
12 defendants no matter how high profile the case or well off the
13 defendant. It is therefore important to begin here with a
14 clear articulation of the governing law.

15 It is also important to bear in mind that Ms. Maxwell,
16 like all defendants, is entitled to a full presumption of
17 innocence, that is, she is presumed innocent and the only
18 grounds for detention at this stage are, under the law, risk of
19 flight or danger to the community.

20 I may consider the weight of the evidence proffered by
21 the government at this stage in making this determination, but
22 unless this matter is resolved by a plea, it will remain
23 entirely for a jury to decide the question of Ms. Maxwell's
24 guilt as to the charges contained in the indictment.

25 Turning to the government's standard under Title 18 of

k7e2MaxC kjc

1 the United States Code, Section 3142, the court may order
2 detention only if it finds that no conditions or combination of
3 conditions will reasonably assure the appearance of the person
4 as required and the safety of any other person in the
5 community.

6 In making a bail determination the court must consider
7 the defendant's dangerousness, if that's raised, and the
8 defendant's risk of flight. A finding of dangerousness, if
9 that were an issue, must be supported by clear and convincing
10 evidence. A finding that a defendant is a flight risk must be
11 supported by a preponderance of the evidence.

12 In a case such as this one, where the defendant is
13 accused of certain offenses involving a minor victim, federal
14 law requires that it shall be presumed that no condition or
15 combination of conditions will reasonably assure the appearance
16 of the person as required. That's citing 18 U.S.C. 3142(a)(3).

17 The Second Circuit has explained that, in a
18 presumption case such as this, a defendant bears a limited
19 burden of production, not a burden of persuasion, to rebut the
20 presumption by coming forward with evidence that she does not
21 pose a danger to the community or a risk of flight.

22 Furthermore, once a defendant has met her burden of production
23 relating to these two factors, the presumption favoring
24 detention does not disappear entirely, but remains a factor to
25 be considered among those weighed by the district court. But

k7e2MaxC kjc

1 even in a presumption case, the government retains the ultimate
2 burden of persuasion by clear and convincing evidence that the
3 defendant presents a danger to the community, if that were an
4 issue, and a showing by the lesser standard of a preponderance
5 of the evidence that the defendant presents a risk of flight.

6 The statute further mandates that the court take into
7 account four factors in making its determination: the nature
8 and circumstances of the offense charged, the weight of the
9 evidence against the person, the history and characteristics of
10 the person, and the nature and circumstances of the danger to
11 any person or the community that would be posed by the person's
12 release. That is 18 U.S.C. 3142(g).

13 Now that the court has laid out the federal statutory
14 requirements that guide its bail determination, it turns to the
15 government's specific application in this case for detention
16 pending trial.

17 The government does not argue, as has been repeatedly
18 made clear today, for detention based on danger to the
19 community. Instead, it rests its argument for detention on
20 Ms. Maxwell's alleged risk of flight. As noted in a
21 flight-risk case, the government bears the burden of proving by
22 a preponderance of the evidence both that the defendant
23 presents an actual risk of flight and that no condition or
24 combination of conditions could be imposed on the defendant
25 that would reasonably assure her presence in court. And I'm

k7e2MaxC kjc

1 quoting there from *United States v. Boustani*, 932 F.3d 79, (2d
2 Cir. 2019).

3 The court concludes as follows:

4 First, the nature and circumstances of the offense
5 here weigh in favor of detention. As noted, the crimes
6 involving minor victims that Ms. Maxwell has been accused of
7 are serious enough to trigger a statutory presumption in favor
8 of detention. And to reiterate, Ms. Maxwell is presumed
9 innocent until proven guilty, but if she were convicted of
10 these crimes, the sentences she faces is substantial enough to
11 incentivize her to flee. In total, Ms. Maxwell, who is 58
12 years old, faces up to a 35-year maximum term of imprisonment
13 if convicted. And even if sentences are run concurrently, she
14 would still face up to a decade of incarceration.

15 Second, noting again that Ms. Maxwell is entitled to
16 the full presumption of innocence, it is appropriate to
17 consider the strength of the evidence proffered by the
18 government in assessing risk of flight. The government's
19 evidence at this early juncture of the case appears strong.
20 Although the charged conduct took place many years ago, the
21 indictment describes multiple victims who provided detailed
22 accounts of Ms. Maxwell's involvement in serious crimes. The
23 government also proffers that this witness testimony will be
24 corroborated by significant contemporaneous documentary
25 evidence. While the defense states that it intends to assert

k7e2MaxC kjc

1 legal defenses based on untimeliness and the nonprosecution
2 agreement, those arguments are asserted in a conclusory fashion
3 and have been directly countered by the government with
4 citations to law. Although the court does not prejudge these
5 matters at this stage, based on what's been asserted thus far,
6 they do not undermine the strength of the government's case at
7 the bail determination stage. Ms. Maxwell is now aware of the
8 potential strength of the government's case against her and
9 arguments countering these defenses, thus creating a risk of
10 flight.

11 Third, the court considers the defendant's history and
12 characteristics and finds that paramount in a conclusion that
13 Ms. Maxwell poses a risk of flight. Ms. Maxwell has
14 substantial international ties and could facilitate living
15 abroad if she were to flee the United States. She holds
16 multiple foreign citizenships, has familial and personal
17 connections abroad, and owns at least one foreign property of
18 significant value. And, in particular, she is a citizen of
19 France, a nation that does not appear to extradite its
20 citizens.

21 Moreover, as the government has detailed in its
22 written submission and today, Ms. Maxwell possesses
23 extraordinary financial resources which could provide her the
24 means to flee the country despite COVID-19-related travel
25 restriction. Given the government's evidence, the court

k7e2MaxC kjc

1 believes that the representations made to Pretrial Services
2 regarding the defendant's finances likely do not provide a
3 complete and candid picture of the resources available.

4 Additionally, while Ms. Maxwell does have some family
5 and personal connections to the United States, the absence of
6 any dependents, significant family ties or employment in the
7 United States leads the court to conclude that flight would not
8 pose an insurmountable burden for her, as is often the case in
9 assessments of risk of flight.

10 In sum, the combination of the seriousness of the
11 crime, the potential length of the sentence, the strength of
12 the government's case at this stage, the defendant's foreign
13 connections, and this defendant's substantial financial
14 resources all create both the motive and opportunity to flee.

15 Now, in the face of this evidence, the defendant
16 maintains she is not a flight risk. She notes that even after
17 the arrest of Jeffrey Epstein and even after the implication by
18 authorities and the press that there was an ongoing
19 investigation into his alleged coconspirators and that she may
20 be implicated, she did not leave the United States. She hasn't
21 traveled, apparently, outside the United States in over a year

22 To the contrary, through counsel, she has stayed in
23 contact with the government. The government doesn't contest
24 these factual representations. The fact that Ms. Maxwell did
25 not flee previously, given these circumstances, is a

k7e2MaxC kjc

1 significant argument by the defense and it is a relevant
2 consideration, but the court does not give it controlling
3 weight here.

4 To begin, in spite of the Epstein prosecution,
5 Ms. Maxwell herself may have expected to avoid prosecution.
6 After all, she was not named in the original indictment. The
7 case was therefore distinguishable from *United States v.*
8 *Friedman*, 837 F.2d 48 (2d Cir. 1988), a case where release was
9 ordered in part because the defendant took no steps to flee
10 after a search warrant was executed against the defendant and
11 he had been arrested on state charges several weeks earlier.

12 Likewise, the mere fact that she stayed in contact
13 with the government means little if that was an effort to stave
14 off indictment and she did not provide the government with her
15 whereabouts. Circumstances of her arrest, as discussed, may
16 cast some doubt on the claim that she was not hiding from the
17 government, a claim that she makes throughout the papers and
18 here today, but even if true, the reality that Ms. Maxwell may
19 face such serious charges herself may not have set in until
20 after she was actually indicted.

21 Moreover, Ms. Maxwell's argument rests on a
22 speculative premise that prior to indictment Ms. Maxwell had as
23 clear an understanding as she does now of the serious nature of
24 the charges, the potential sentence she may face, and the
25 strength of the government's case. Whatever calculation and

k7e2MaxC kjc

1 incentive she had before this indictment may very well have
2 changed after it. In other words, her federal indictment may
3 well change her earlier decisions and, given the defendant's
4 resources, the court concludes that Ms. Maxwell poses a
5 substantial actual risk of flight.

6 Having made this determination, the court next turns
7 to whether the government has met its burden to show by a
8 preponderance of the evidence that no combination of conditions
9 could reasonably assure the defendant's presence. The court is
10 persuaded that the government has met this burden and concludes
11 that even the most restrictive conditions of release would be
12 insufficient.

13 As an initial matter, the financial component of
14 Ms. Maxwell's proposed bail package appears to represent a
15 relatively small component of the access available to her and
16 is secured only by a foreign property said to be worth about
17 several million dollars. But even a substantially larger
18 package would be insufficient. The extent of her financial
19 resources is demonstrated by some of the transactions and bank
20 accounts discussed in the government's submission and here
21 today, and Ms. Maxwell has apparently failed to submit a full
22 accounting or even a close to full accounting of her financial
23 situation. She has provided the court with scarce information
24 about the financial information of her proposed cosigners, for
25 example. Without a clear picture of Ms. Maxwell's finances and

k7e2MaxC kjc

1 the resources available to her, it is practically impossible to
2 set financial bail conditions that could reasonably assure her
3 appearance in court.

4 Even if the picture of her financial resources were
5 not opaque, as it is, detention would still be appropriate.
6 Personally, the defendant not only has significant financial
7 resources, but has demonstrated sophistication in hiding those
8 resources and herself. After the arrest of Jeffrey Epstein,
9 Ms. Maxwell retreated from view. She moved to New England,
10 changing locations on multiple occasions, and appears to have
11 made anonymous transactions both big and small. The defense
12 said that she did all of this not to hide from the government
13 but to maintain her privacy and avoid public and press
14 scrutiny. Even assuming that Ms. Maxwell only wanted to hide
15 from the press and public, an assumption that the court does
16 not share, but even assuming that's the case, her recent
17 conduct underscores her extraordinary capacity to evade
18 detection, even in the face of what the defense has
19 acknowledged to be extreme and unusual efforts to locate her.

20 Because of these concerns, even a bail package with
21 electronic monitoring and home security guards would be
22 insufficient. Were she to flee, the defendant could simply
23 remove the monitoring bracelet and, as other courts have
24 observed, home detention with electronic monitoring does not
25 prevent flight. At best it limits a fleeing defendant's head

k7e2MaxC kjc

1 start. Likewise, the possibility that Ms. Maxwell could evade
2 security guards or monitoring is a significant one.

3 The court finds by a preponderance of the evidence
4 that no combination of conditions could reasonably assure her
5 presence in court. The risks are simply too great.

6 Defense cites a number of cases, including *Esposito*,
7 *Dreier*, and *Madoff*, as examples of serious and high-profile
8 prosecutions where the courts, over the government's objection,
9 granted bail to defendants with significant financial
10 resources. But unlike those defendants, Ms. Maxwell possesses
11 significant foreign connections.

12 This case is distinguishable for other reasons, as
13 well. For example, the risk of flight in *Esposito* appears to
14 have been based on the resources available to defendant, not
15 foreign connections or experience and a record of hiding from
16 being found.

17 In *Madoff*, the defendant had already been released on
18 a bail package agreed to by the parties for a considerable
19 period of time before the government sought detention. The
20 court there found there were no circumstances in the
21 intervening period showing that the defendant had become a
22 flight risk. Because of these crucial factual differences, the
23 court finds the cases not on point and not persuasive.

24 Finally, in arguing for release, the defense raises
25 the challenges and risks posed by the COVID-19 pandemic. The

k7e2MaxC kjc

1 court is greatly concern by the Bureau of Prisons' ability to
2 keep inmates and detainees safe during the health crisis and
3 has found those considerations to be significant in other
4 cases. The argument nonetheless fails in this case for several
5 reasons. Most importantly, unlike almost all of the cases in
6 which this court has granted release as a result of COVID-19,
7 Ms. Maxwell has not argued that her age or underlying health
8 conditions make her particularly susceptible to medical risk
9 from the virus. In other words, she doesn't argue that she is
10 differently situated than many other federal inmates with
11 respect to the risk posed by COVID-19. In light of the
12 substantial reasons that I have already identified favoring
13 Ms. Maxwell's detention and her not making any arguments based
14 on her age or health, the COVID-19 pandemic alone does not
15 provide grounds for her release.

16 Second, the defense argues that pretrial release is
17 necessary for Ms. Maxwell to prepare her defense, as
18 COVID-19-related restrictions at the prison at which she is
19 held, the MDC, will hamper her ability to meet counsel and
20 review documents. The court notes that this case is at the
21 early stages. There will be no hearings, let alone a trial,
22 for a significant period of time. The case does stand in stark
23 contrast to *United States v. Stephens*, invoked by the defense,
24 in which this court at the beginning of the pandemic granted
25 temporary release to a defendant who was scheduled to have an

k7e2MaxC kjc

1 evidentiary hearing within one week. In contrast, the
2 defendant is in the same position as any newly indicted
3 defendant who is incarcerated in terms of the need to access
4 counsel. Indeed the defense's logic, all pretrial detainees
5 currently incarcerated at MDC and any federal facility would
6 need to be released to prepare their defense. To the contrary,
7 the MDC has continued to develop procedures to ensure
8 attorney-client access at the facility, and the defendants
9 detained at MDC are able to conduct video and phone conferences
10 with their attorneys. There is ongoing litigation before
11 Judge Brodie in the Eastern District of New York about the
12 adequacy of attorney-client access at the MDC. That is case
13 No. 19 Civ. 660. Public filings from the court-appointed
14 mediator in that case describe the availability of legal phone
15 calls and video calls, video conferences for the purposes of
16 reviewing discovery between detained defendants and their
17 counsel, and that same report indicates that MDC is currently
18 developing a plan to resume in-person attorney-client visits in
19 the near future.

20 At this stage in this case and at this point in the
21 pandemic in New York City, these measures are sufficient to
22 ensure Ms. Maxwell has access to her counsel. To further
23 assuage these concerns, the court orders the government in this
24 case, and frankly all others before it, to work with the
25 defense to provide adequate communication between counsel and

k7e2MaxC kjc

1 client. If the defense finds this process inadequate in any
2 way, it may make a specific application to this court for
3 further relief.

4 In sum and for all of the foregoing reasons, the court
5 finds that the government has met its burden of showing by a
6 preponderance of the evidence that the defendant is a risk of
7 flight and that no combination of conditions could reasonably
8 assure the presence of the defendant at court.

9 The defendant is hereby ordered to be detained pending
10 trial.

11 Counsel, is there anything else that I can address at
12 this time?

13 Mr. Cohen?

14 MR. COHEN: Not from the defense, your Honor.

15 THE COURT: Thank you.

16 Ms. Moe?

17 MS. MOE: Not from the government, your Honor. Thank
18 you.

19 THE COURT: All right. My thanks to counsel for your
20 advocacy and my thanks to the staff of the court who worked
21 hard to provide the access to these proceedings in the
22 pandemic.

23 We are hereby adjourned.

24 oOo